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PRIDEAUX'S

PRECEDENTS

IN

CONVEYANCING;

WITH

Dissertations

ON ITS

LAW AND PRACTICE.

FIFTEENTH EDITION

BY

JOHN WHITCOMBE,

OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

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PREFACE TO THE FIFTEENTH EDITION.

In consequence of the lamented death of my old and much-valued friend, Mr. Frederick Prideaux, it has devolved on me to present to the Profession the Fifteenth Edition of the work which bears his name. Mr. Prideaux was (as is well known) the original Author, and the first three editions came out in his name only. In 1863 I became his colleague, and we have been jointly responsible for all the editions published since that date. As regards the present one, some progress had been made in its preparation before Mr. Prideaux's last illness, and I have derived much assistance from notes and memoranda made by him.

Several important alterations and additions have been made in this Edition.

The two dissertations on "Conditions of Sale" and "Agreements for Sale" have been consolidated into one under the heading of "Contracts for Sale." This, in conjunction with those which follow on "Abstracts,"

"Searches," and "Purchase Deeds," will be found to form a concise and practical treatise on the law of "Vendor and Purchaser."

A work on Conveyancing cannot be considered complete if it ignores altogether the voluntary system of registration of title now in operation under the Land Transfer Act, 1875. It will be borne in mind that the official system of transfer under this Act and the Land Registry Act, 1862 (which is still in force as regards land registered under it), is confined, speaking generally, to absolute dispositions of, and charges on, the fee simple of freehold land, and the whole leasehold interest in leasehold land, and that in a number of transactions registered dispositions have to be supplemented by unregistered instruments prepared outside the office of Land Registry by the professional advisers of the parties interested. A dissertation is therefore inserted in this Edition on "Registration of Title," and is followed by precedents of "Instruments relating to Registered Land."

The Acts of Parliament passed and the cases decided by the Courts since the publication of the last edition affecting the Law and Practice of Conveyancing are referred to in their proper places, and the Precedents have been carefully adapted to the altered state of the law whenever necessary. Under this head the important

change in the law affecting the disposition of land by will for charitable purposes requires particular attention.

It has been thought unnecessary to continue the insertion at length of the Conveyancing and Settled Land Acts in the Appendices, their more important provisions being either set out *verbatim* or their effect sufficiently stated in the course of the dissertations in connection with the subject to which they relate.

The Tables of Contents and Indexes to both volumes have been reconstructed.

J. W.

January, 1893.

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CONTRACTS FOR SALE.

Division of the subject.

It is proposed in this dissertation to consider—I. The essentials of a binding contract for sale of land, having regard to sect. 4 of the Statute of Frauds; what is an interest in or concerning land within the meaning of that statute; and the effect of part performance to take a case out of the statute; II. The obligations arising out of an open contract for the sale of land, and how far they should be qualified by special conditions; III. The legal remedies for obtaining performance of a contract or relief for a breach of contract; IV. Some other incidents and consequences of the contract; and V. The stamps on contracts for sale.

I. *The essentials of a binding contract for sale of land, having regard to sect.* 4 *of the Statute of Frauds.*

By Statute of Frauds agreement must be in writing, signed by the party to be charged or his agent.

By sect. 4 of the Statute of Frauds (*a*), it is enacted that "no action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

The whole agreement must be expressed in writing.

In order to satisfy the statute there must be a writing signed by the party to be charged, or by some person lawfully authorized by him, which writing must either itself express all the terms of the agreement, or refer to some existing document which, when read in conjunction with it, does so.

Parol evidence admissible to connect

Where it is sought to prove an agreement from several documents, parol evidence is admissible to

(*a*) 29 Car. 2, c. 3.

several documents so as to form a contract.

connect them, and for this purpose it is not necessary for the one document to describe, or even contain an express reference to, the other; it is sufficient if the Court is satisfied that such a reference is intended.

Examples.

Thus, if A. by letter offers to sell land to B. on the terms therein specified, and B. by letter says, "I accept your offer," parol evidence may be given to show that the offer alluded to by B. is that contained in A.'s letter (*b*). So in a case where the signed document referred to "instructions," it was shown by parol evidence that instructions had been given in writing, and that these were the instructions referred to (*c*). And in another case, where B. signed an agreement to purchase land at H. from A., and A. signed a receipt expressed to be "for a deposit on the purchase of the land at H.," it was held that the receipt referred to the agreement, and constituted a contract binding on A. (*d*). Again, where A. signed a memorandum containing all the essential parts of a contract, except the description of the property, and afterwards wrote to B. acknowledging the receipt of a deposit "on account of the purchase-money of the F. estate," it was held that the two documents might be read together (*e*).

Essential parts of a contract.

The essential parts of a contract for sale are; the names, or a sufficient description, of the vendor and purchaser; the amount and nature of the consideration to be paid on one side and received on the other; and a sufficient description of the property sold.

What a sufficient designation of vendor and of the property.

It is not necessary that the vendor should be actually named in the written contract, if he is sufficiently described to admit of his being identified by extrinsic evidence, and the same rule applies to the description of the property sold. The term "vendor" or "vendor's solicitor" is not a sufficient description (*f*); but it has

(*b*) *Per* Bramwell, L. J., in Long *v.* Millar, 4 C. P. D. 454.

(*c*) Ridgway *v.* Wharton, 6 H. L. C. 238.

(*d*) Long *v.* Millar, 4 C. P. D. 450.

(*e*) Oliver *v.* Hunting, 44 C. D. 205. See also Studds *v.* Watson, 28 C. D. 305.

(*f*) Sale *v.* Lambert, L. R. 18 Eq. 1; Jarrett *v.* Hunter, 34 C. D. 182.

been held to be sufficient to describe the vendor as "the proprietor," or "the trustee for sale" (*g*), and the property as "the property purchased for £420, at the Sun Inn, Paxton, on the above date" (*h*).

A contract for lease must mention time for commencement.

In a contract for a lease, it is necessary in order to satisfy the Statute of Frauds that the time for its commencement should be mentioned (*i*).

What is a sufficient signing.

The proper place for the signature of a contract is at the end of it, but the position is not essential, provided that it is so placed as to authenticate the whole instrument (*j*). Thus where a person drew up an agreement in his own handwriting beginning "I, A. B., agree," this was held sufficient (*k*). And in another case, where an agreement in the form of a letter from A. addressed to B., whose name appeared at the beginning of the letter, was written by B.'s agent with his authority and presented to A. for signature and signed by him, it was held that B.'s name inserted by his agent was a signature binding on him within the statute (*l*). But an agreement in the usual form containing the names of the parties, and ending with "As witness our hands," without being followed by any name or signature, is not signed so as to satisfy the statute, although in the handwriting of the solicitor or agent of the party sought to be charged (*m*). So the alteration of a draft conveyance will not take the case out of the statute (*n*), nor the approval of a draft conveyance by the solicitor of one of the parties (*o*).

Agent may be appointed by parol.

An agent for the sale or purchase of land may be appointed by parol, and in the case of a private sale his authority may be revoked at any time before the agreement is signed.

(*g*) Sale *v.* Lambert, *ubi supra;* Rossiter *v.* Miller, 3 App. Cas. 1124; Catling *v.* King, 5 C. D. 660.

(*h*) Shardlow *v.* Cotterell, 20 C. D. 90.

(*i*) Marshall *v.* Burridge, 19 C. D. 233.

(*j*) Stokes *v.* Moore, 1 Cox, 219.

(*k*) Esp. N. P. Cas. 190; Saunderson *v.* Jackson, 2 Bos. & Pul. 238; Bleakley *v.* Smith, 11 Sim. 150.

(*l*) Evans *v.* Hoare, (1892) 1 Q. B. 593.

(*m*) Hubert *v.* Treherne, 3 Man. & G. 743; 11 L. J. (N. S.) C. P. 78.

(*n*) Hawkins *v.* Holmes, 1 P. Wms. 770.

(*o*) Sug. V. & P. 117.

Auctioneer agent of both vendor and purchaser.

A sale by auction is within the statute, so that there is no binding contract until the memorandum, which is usually written at the foot of the conditions of sale, is signed by the parties or their agent. But a vendor by appointing an auctioneer impliedly authorizes him or his clerk to sign the memorandum as his agent, and a similar authority is given by the bidder by the act of bidding. Before the fall of the hammer either party may, it seems, revoke the authority, but not after the property has been knocked down (*p*).

What is a sufficient signature by auctioneer.

The signing by the auctioneer of a receipt for the deposit, or the entry by him of the sale in his books, may be a sufficient signature to satisfy the statute (*q*).

Limit of agent's authority.

An agent cannot bind his principal beyond the authority given him (*r*). And a land or house agent, to whom general instructions are given to find a purchaser, is not authorized to sign a contract on the vendor's behalf (*s*).

Contract by letters.

Contracts for sale are frequently made by letters containing an offer to sell and an acceptance of the offer.

An offer by letter accepted by letter makes a complete contract when last letter is posted.

If A. by letter offers to sell land to B., and B. by letter accepts the offer, the contract is complete from the time when B.'s letter is posted, and it makes no difference if the letter is lost or delayed in transmission (*t*).

Offer may be withdrawn before acceptance.

An offer may be withdrawn or amended, so long as it remains unaccepted, and this is so, although the person making the offer promises to keep it open for a specified time, such promise being void as a *nudum pactum*.

Withdrawal of an offer not effective until known to other party.

The withdrawal of an offer is not effective, until it has been brought to the knowledge of the person to whom the offer was made; and an acceptance posted before the withdrawal is received is complete, although the letter of withdrawal may have been actually posted

(*p*) Sug. V. & P. 119; Dart, 209, and cases there cited.

(*q*) Coles *v.* Trecothick, 9 Ves. 234; Blagden *v.* Bradbear, 12 Ves. 466; Emerson *v.* Heelis, 2 Taunt. 38.

(*r*) Olding *v.* Smith, 16 Jur. 497.

(*s*) Hamer *v.* Sharp, L. R. 19 Eq. 108.

(*t*) Adams *v.* Lindsell, 1 B. & A. 681; Household Fire Insurance Company *v.* Grant, 4 Ex. D. 216.

before the letter of acceptance (*u*). A sale of the property to a third party is equivalent to a withdrawal, but it must be made known to the party to whom the offer was made before he accepts it (*x*).

A sale to a third party equivalent to a withdrawal.

The answer to the written offer must be a simple acceptance of the terms proposed, without the introduction of any new or different term (*y*); and if the proposal is once refused, it cannot afterwards be revived by tendering a simple acceptance of it (*z*).

Answer must be a simple acceptance.

If an agreement for sale is entered into by letters or otherwise, containing all the necessary terms, so as to satisfy the Statute of Frauds, such an agreement is binding, although it may contain a provision that a more formal agreement is to be prepared and signed by both parties (*a*). But if an offer to purchase is made, and such offer is accepted subject to a provision as to a contract, then the stipulation as to the contract is a term and condition of the acceptance, and there is no agreement independent of that stipulation (*b*). If an offer is made and accepted, subject to the title being approved by the purchaser's solicitor, it is apprehended that such a reservation does not prevent the contract from being considered as complete, and would not enable the purchaser to refuse specific performance, if the vendor has a good title, and the purchaser's solicitor unreasonably and improperly refuses to approve it (*c*).

When a provision for the preparation of a formal agreement amounts to a condition.

Although two letters standing alone might be sufficient evidence of a contract, a subsequent correspondence continuing the negotiation on an important point would show that the contract was not complete (*d*).

Negotiation re-opened by subsequent correspondence.

(*u*) Byrne *v.* Van Tienhoven, 5 C. P. D. 344; Henthorn *v.* Fraser, (1892) 2 Ch. 27.

(*x*) Dickinson *v.* Dodds, 2 C. D. 463, as explained in Henthorn *v.* Fraser.

(*y*) Holland *v.* Eyre, 2 Sim. & Stu. 194; Appleby *v.* Johnson, L. R. 9 C. P. 152.

(*z*) Hyde *v.* Wrench, 3 Beav. 334.

(*a*) Fowle *v.* Freeman, 9 Ves. 351; Kennedy *v.* Lee, 3 Mer. 441; Thomas *v.* Dering, 1 Keen, 729; Bonnewell *v.* Jenkins, 8 C. D. 70.

(*b*) Wood *v.* Midgley, 5 D. M. & G. 41; Chinnock *v.* Marchioness of Ely, 4 D. J. & S. 638; Rossiter *v.* Miller, 5 C. D. 648; Crossley *v.* Maycock, L. R. 18 Eq. 180; Winn *v.* Bull, 7 C. D. 29.

(*c*) Hussey *v.* Horne Payne, 4 App. Ca. 311; Clack *v.* Wood, 9 Q. B. D. 275.

(*d*) Hussey *v.* Horne Payne, *ubi supra;* Bristol &c. Bread Company *v.* Maggs, 44 C. D. 616.

Notice by company to treat with landowner constitutes relation of vendor and purchaser, to what extent.

A notice given by a railway company to treat with a landowner for the purchase of land for the purposes of their Act, constitutes, as between the landowner and the company, the relation of vendor and purchaser to a certain extent and for certain purposes; and some of the consequences which flow from an actual contract also follow upon the notice to treat, such as, that the particular lands which the company are to take and the landowner to give up, after certain steps prescribed by the Act shall have been taken, are fixed, and neither party can get rid of the obligation, the one to take, and the other to give up, such lands, but in no other sense, and to no further extent does the notice constitute a contract, at least on the part of the landowner (*e*). Thus it has been held, that if an owner dies after receiving the usual notice to treat, but before the price is fixed, the purchase-money goes to his heir, and not to his personal representative (*f*). But as soon as the price is fixed, the relation of the parties as vendor and purchaser is as fully constituted as in the case of a formal and regular agreement (*g*).

What is an interest in or concerning land within the meaning of the statute.

What is, or is not, an interest in land within the statute.

It has been held that an agreement to sell a right to sport over land and take away the game is within the statute (*h*), but that an agreement to sell tenant's fixtures (*i*), or shares in a mining company worked on

(*e*) Haynes *v.* Haynes, 1 Drew. & Sm. 426, and the cases there cited; Gardner *v.* Charing Cross Railway Company, 2 Johns. & Hem. 248; *Re* the Battersea Park Acts, 32 Beav. 591; Guest *v.* Poole & Bournemouth Railway Company, L. R. 5 C. P. 553.

(*f*) *Re* the Battersea Park Acts, 32 Beav. 591.

(*g*) The Regent's Canal Company *v.* Ware, 23 Beav. 575; Mason *v.* The Stokes Bay Pier and Railway Company, 32 L. J. Ch. 110; Metropolitan Railway Company *v.* Woodhouse, 11 Jur. 296; Harding *v.* Metropolitan Railway Company, L. R. 7 Ch. 154; Watts *v.* Watts, *ib.* 17 Eq. 217.

(*h*) Webber *v.* Lee, 9 Q. B. D. 315.

(*i*) Hallen *v.* Runder, 1 C. M. & R. 266; Lee *v.* Gaskell, 1 Q. B. D. 700.

the cost-book principle (*k*), or shares in a railway company, is not (*l*).

As to timber and growing crops.

With regard to timber and growing crops, the rule is, that whatever property of this kind would upon the death of an owner of land go to his executors as emblements is not within the statute. Upon this principle it has been decided that the statute does not apply to an agreement for the sale of growing crops of potatoes (*m*), turnips (*n*), wheat, or barley (*o*), these being produced by the labour and industry of the cultivator, and it is immaterial whether the crops are to be gathered by the vendor or the purchaser. But standing timber, fruit on a tree, grass (*p*), and the like, are considered natural growths and part of the land, until severed from it. If, then, timber or a crop of fruit or grass is sold while growing, and it is intended that it shall remain on the land and derive further nutriment and benefit therefrom, and be eventually cut or gathered by the purchaser, part of the subject-matter of the contract is an interest in land, and the case is within the statute. If, however, the thing sold is to be delivered by the vendor, and the purchaser has no interest in it until severed, or if it is to be removed, whether by the buyer or seller, at once or so soon afterwards that any further benefit to it from its remaining on the land does not appear to be intended, then the sale is a mere chattel, and not within the statute (*q*).

Agreement for lease.

Although by sect. 2 of the Statute of Frauds a lease for any term not exceeding three years, where the

(*k*) Watson *v.* Spratley, 10 Exch. 22; Powell *v.* Jessop, 18 C. B. 336.

(*l*) Duncuft *v.* Albrecht, 12 Sim. 189.

(*m*) Parker *v.* Staniland, 11 East, 362; Evans *v.* Roberts, 5 B. & C. 829; Warwick *v.* Bruce, 2 Mau. & Selw. 205.

(*n*) Dunne *v.* Ferguson, Hayes, 540.

(*o*) Jones *v.* Flint, 10 Ad. & Ell. 753; Mayfield *v.* Wadsley, 3 B. & C. 357.

(*p*) Although the above-mentioned things cannot in strictness be said to be produced spontaneously, yet the expense and labour employed in their original planting or sowing bears so small a proportion to their natural growth that they are not considered *fructus industriales*.

(*q*) Marshall *v.* Green, 1 C. P. D. 35; Smith *v.* Surman, 9 B. & C. 829. See the observations on Marshall *v.* Green in Lavery *v.* Pursell, 39 C. D. 508.

reserved rent amounts to two-thirds at least of the improved value, may be made by parol, an agreement for the sale of such a lease must be in writing(*r*).

Agreement comprising land and personal property.

An agreement for the sale of land and personal property at one sum, which is void as to the land as not complying with the statute, is void also as regards the personal property (*s*).

The effect of part performance to take a case out of the statute.

What is part performance.

It is a settled rule of the Court to decree specific performance of a verbal agreement to sell or lease land, notwithstanding the statute, where there has been what is called part performance, *i. e.*, some act resulting from the agreement and unequivocally referable to it, which so changes the position of the parties that one of them would suffer detriment if the agreement were not carried out (*t*).

Delivery of possession,

The common instance of an act of part performance is delivery of possession. The acknowledged possession of a stranger in the land is not explicable except on the supposition, and is therefore evidence, of some agreement, and the Court considers itself at liberty, without infringing the statute, to inquire what the terms of that agreement are (*u*). If at the time of the contract for sale the purchaser was already in possession as tenant, the Court cannot interfere, because in that case the possession is explicable without supposing any agreement; but if in the case of an existing lease the lessor verbally agrees to renew at a higher rent, and the higher rent is actually paid, such pay-

or change of tenure is sufficient.

(*r*) Barrett *v.* Rolph, 14 M. & W. 348.

(*s*) Sug. V. & P. 102, and cases there cited.

(*t*) Gunter *v.* Halsey, Amb. 58; Whitbread *v.* Buckhurst, 1 B. C. C. 415; McManus *v.* Cook, 35 C. D. 681.

(*u*) Morphett *v.* Jones, 1 Sw. 172; Dale *v.* Hamilton, 5 Hare, 380; Maddison *v.* Alderson, 8 Ap. Ca. 467. It will be borne in mind that the 4th section of the statute does not make a parol contract void, but only provides that no action shall be brought to charge a person upon it. When there has been an overt act afterwards, such as delivery of possession, the equity arises out of this overt act, and not out of the parol agreement taken by itself.

ment indicating a change of tenure has been held equivalent to a change of possession (*x*).

Payment of part of the purchase-money not sufficient.

The payment of part of the purchase-money, or even (according to the balance of judicial authority) of the whole of it, is not an act of part performance such as will take a case out of the statute. The payment of money is an equivocal act, and not (in itself) indicative of any contract affecting land (*y*).

Acts not changing the position of the parties insufficient.

So, acts merely auxiliary to a contract, and which do not change the position of the parties, *e. g.*, the delivery of an abstract, the measuring of the land, the payment of auction duty (*z*), are not part performance within the meaning of the rule.

Whether expenditure of money in improvements where there has been no change of possession, is sufficient, *quære.*

Whether the mere expenditure of money on the faith of a parol contract, where there has been no change of possession, takes a case out of the statute, as where a landlord agrees to sell to a tenant in possession, or to grant him a renewed lease at the same rent, and the tenant, on the faith of the agreement, spends money in building, is doubtful. There are *dicta* in the affirmative (*a*), but principle would seem to be on the negative side, for the expenditure is consistent with the present position of the parties, and does not necessarily indicate any change in that position (*b*)

Principle on which doctrine rests.

It has been said that the doctrine rests on the principle that equity will not permit the statute to be an instrument of fraud, and that it would be unjust to allow a man who has taken advantage of a contract to refuse to perform his part of it. This must be taken to mean not that a Court of equity can, on the ground of a supposed fraud or injustice, overrule the express terms of an Act of Parliament, but that, whenever there are circumstances, such as change of possession, which enable the Court to enforce the contract, without infringing the statute, it avails itself

(*x*) Wills *v.* Stradley, 3 Ves. 378.
(*y*) Dale *v.* Hamilton, *ubi supra;* Maddison *v.* Alderson, 7 Q. B. D. 174; 8 App. Ca. 467; Humphries *v.* Green, 10 Q. B. D. 148.
(*z*) Buckmaster *v.* Hanop, 7 Ves. 341; Sug. V. & P., p. 123.
(*a*) Sutherland *v.* Briggs, 1 Hare, 26.
(*b*) Farmer *v.* Dawson, 14 Ves. 386.

of those circumstances in order to prevent the fraud or injustice above referred to (*c*).

Doctrine cannot be applied against a person not a party to the act of part performance.

In order to enable the Court to interfere, the person against whom the parol contract is sought to be enforced must have been a party to the act or acts of part performance forming the ground of the action. Thus a verbal agreement by a tenant for life to grant a lease in execution of a power, followed by delivery of possession and expenditure by the intended lessee, cannot be enforced against the remainderman, unless it can be shown that such expenditure was permitted by him with a knowledge that the agreement was only a verbal one (*d*).

Doctrine applies to any agreement relating to land, and not merely to sales and leases.

The doctrine is not confined to sales or leases, but extends to any agreement affecting land. Thus where a father verbally promised, in consideration of his daughter's marriage, to give her a house as a wedding present, and immediately after the marriage he put his daughter and her husband into possession; it was held that the possession being referable to the verbal promise, the case was taken out of the statute (*e*). On the other hand, in a case where a person induced a woman to live with him as housekeeper without wages for many years by a verbal promise to make a will leaving her a life interest in some land, it was held that the woman's service not being necessarily referable to any contract affecting land, there was no part performance to take the case out of the statute (*f*).

II. *The obligations arising under an open contract for the sale of land, and how far they should be qualified by special conditions.*

As to the vendor's title.

The obligations of a vendor as to

When a person enters into a contract for sale without qualification, he impliedly asserts that the property

(*c*) Mundy *v.* Joliffe, 5 M. & C. 167; Alderson *v.* Maddison, 5 Ex. D. 293.

(*d*) Blore *v.* Sutton, 3 Mer. 237; Trotman *v.* Flesher, 3 Giff. 1.

(*e*) Ungley *v.* Ungley, 5 C. D. 887.

(*f*) Maddison *v.* Alderson, 8 App. Ca. 467.

is his, and that he has a good title. He is therefore bound, in the absence of stipulation, and subject to certain exceptions which will be mentioned in the following pages, to deduce and verify his title for a period of at least forty years preceding the day of sale (*g*). This obligation involves the delivery to the purchaser of an abstract of title extending over the above period; the production of all deeds and documents stated in the abstract, not being instruments of record; the identification of the property as described in the contract with the property described in the several documents of title; and the proof, by certificates, declarations, or otherwise, of all births, marriages, deaths, heirships, and other matters and facts forming a link in the chain of title, unless such facts are recited or stated in documents twenty years old, in which case the recital or statement is, under the rules enacted by the Vendor and Purchaser Act, 1874 (*h*), made sufficient evidence. But the expense of the production and inspection of documents not in the vendor's possession (including, according to a recent decision, documents deposited by the vendor with his mortgagee (*i*)), and of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences (*k*), and information not in the vendor's possession, and all copies or abstracts of or extracts from any documents

proving his title in the absence of stipulation.

Production of deeds.

Identification of parcels.

Proof of facts.

Expense of evidence not in vendor's possession.

(*g*) By the Vendor and Purchaser Act, 1874, s. 1, forty years is substituted for sixty years, which was the old rule, and which was calculated with reference to the probable duration of human life, it being considered that sixty years was the shortest period at the end of which it could be fairly presumed that property represented or supposed to be held in fee simple might not in fact be held for a life or lives still existing. See Else *v.* Else, L. R. 13 Eq. 196, where the production of a will, dated nearly fifty years prior to the day of sale, revealed the fact that the vendor's estate was determinable on the death, without issue, of a person still living and childless.

Forty years substituted for sixty years as root of title.

(*h*) Sect. 2, rule 2.

(*i*) *Re* Willett, W. N. 1889, p. 66.

(*k*) On the purchase of a lease, which contained a covenant by the lessee that he would finish the house fit for habitation to the satisfaction of the lessor's surveyor, it was held that the vendor must, at his own expense, procure the surveyor's certificate, such certificate not being an evidence of title but part of the title itself. *In re* Moody and Yates' Contract, 30 C. D. 344.

Vendor must complete his title at his own expense.

not in the vendor's possession, if such production &c., is required by a purchaser for verification of the abstract or for any other purpose, must be borne by the purchaser requiring the same (*l*). Documents in the vendor's possession should be produced at his own residence, or at some convenient place near the property or in London (*m*), *e. g.*, the office of his solicitor or his solicitor's London agents.

Place where documents should be produced.

Purchaser's rights in respect of the vendor's title should be restricted by conditions, if necessary.

If the state of a vendor's title makes it imprudent for him to proceed to a sale under the full obligation above mentioned, he should sell under conditions restricting the legal rights of the purchaser. The extent to which this ought to be done depends on the particular circumstances of each title; and in preparing conditions, the vendor's solicitor should bear in mind—first, that it is his duty to protect his client from being subjected to troublesome inquiries which may be guarded against by reasonable conditions; and, secondly, that to insert very stringent conditions may have the effect of damping a sale and deterring purchasers, although as a matter of experience this is seldom the case.

As to the commencement of the title.

When the vendor has in his possession or power a deed of about forty years old, which will form a good root of title, and the title is by the subsequent deeds duly and regularly deduced therefrom, and there are no special circumstances making it desirable to commence at a more recent date, the abstract should be made to commence with that deed. But where this cannot conveniently be done, a condition must be inserted making the abstract to commence with a deed of more recent date. In the case of small properties, the production of a thirty or twenty years', or even a shorter title, will often be deemed sufficient, and a condition to that effect will not deter a purchaser.

Purchaser precluded from requiring abstract of title must be furnished at vendor's expense, whether deeds in his possession or not.

A purchaser cannot require the production, or any abstract or copy, of any document dated or made

(*l*) Conveyancing Act, 1881, s. 3, sub-s. 6. This sub-section does not relieve the vendor from the obligation of furnishing in the first instance, at his own expense, an abstract of all documents forming his title, whether in his possession or not. *In re* Johnson and Tustin, 30 C. D. 42.

(*m*) Sug. 429; Dart, 470.

before the time prescribed by law or stipulated for commencement of the title, even though the same creates a power which is subsequently exercised by an abstracted instrument, nor require any information, or make any requisition, objection, or inquiry, with respect to any such document or the title prior to that time, notwithstanding that any such document, or that prior title, is recited, covenanted to be produced, or noticed; and he must assume, unless the contrary appears, that the recitals contained in the abstracted instruments of any document forming part of the prior title are correct, and give all the material contents of the document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise (*n*).

production of any document, &c., dated before stipulated commencement of title.

If it is proposed to commence the title with a deed less than forty years old, and such deed is one which would not be a satisfactory root of title, *e.g.*, a voluntary settlement, the condition should disclose its nature, otherwise it will be held to be misleading (*o*).

Condition should state nature of deed with which title commences.

If the production of a document dated before the time stipulated for the commencement of the title would disclose a serious defect in the present title, *e.g.*, that the vendor has only an estate for life instead of the fee simple, or that his estate is otherwise determinable (*p*), or that the property is subject to a mortgage (*q*), a purchaser would not be precluded from objecting on this account, should he obtain knowledge of it, nor would the vendor be justified in concealing from him the document showing the defect.

Earlier document showing serious defect in present title should not be withheld.

Where a vendor is aware that his title is defective, the only proper and safe course is to state clearly on the face of the conditions the nature of the defect, and to provide that no objection shall be made on account thereof (*r*), or to refer the purchaser to, and give him

Where vendor has defective title, nature of defect should be stated.

(*n*) Conveyancing Act, 1881, s. 3, sub-s. 3.

(*o*) *In re* Marsh and Earl Granville, 24 C. D. 11.

(*p*) Else *v.* Else, L. R. 13 Eq. 196.

(*q*) Waddell *v.* Wolfe, L. R. 9 Q. B. 515.

(*r*) See Smith *v.* Watts, 4 Drew. 338, as a case in which the condition was held sufficiently precise; and Drysdale *v.* Mace, 5 De G. M.

an opportunity of inspecting before the sale, the documents showing the real state of the title, and provide that he shall accept such a title as the documents disclose. A general condition which does not state that there is any defect, though its language would be sufficiently comprehensive to cover it if known to exist, will not protect the vendor. Thus, where the conditions provided that no objection should be taken in respect of a specified under-lease, or in respect of "any other under-lease" prior to a certain date, and it appeared that there was another existing under-lease known to the vendor, it was held that he ought to have disclosed it, and had not relieved himself of this obligation by the general condition (*s*).

What is a misleading condition.

A condition will be deemed misleading if it requires the purchaser to assume something which the vendor knows to be untrue (*t*). But a condition requiring the purchaser to assume certain facts is not misleading, if the vendor believes them to be true, even though the condition is intended to cover a defect which goes to the root of the title, and does not on the face of it explain what the defect is (*u*).

Condition that purchaser shall accept such title as vendor has.

A vendor may stipulate for the sale of an estate with such title only as he happens to have, and a purchaser buying under such a contract cannot complain if he gets a defective title (*x*). Thus, where on a sale by the assignees of a bankrupt it was provided that the purchaser should have an assignment of the bankrupt's interest "under such title as he lately held the same, an abstract of which may be seen at the office of the solicitor," and the auctioneer stated that it was a re-sale on account of a defect in the title, and that

& G. 103; Webb *v.* Kirby, 7 *ib.* 376; and Osborne *v.* Harvey, 7 Jur. 229, as cases where the condition was held not binding, because not expressed with sufficient clearness.

(*s*) Edwards *v.* Wickwar, L. R. 1 Eq. 68.

(*t*) *Re* Banister, 12 C. D. 131.

(*u*) *In re* Sandbach and Edmondson's Contract, (1891) 1 Ch. 99. If in this case it had been shown by the purchaser that the facts which he was required to assume were untrue, it is conceived that he would not have been bound.

(*x*) Freme *v.* Wright, 4 Madd. 364. See also Wilmot *v.* Wilkinson, 6 B. & C. 506; Spratt *v.* Jeffery, 10 B. & C. 249; 8 L. J. K. B. 114; Hume *v.* Pocock, L. R. 1 Ch. 379.

the purchaser was not to expect a good title, the purchaser was compelled to complete, although the title was defective (*y*). So where the purchaser agreed to take the vendor's title without dispute, he was not allowed to object on account of the legal estate being outstanding (*z*). But a condition, that the purchaser shall only be entitled to the production of such of the deeds as are in the vendor's possession, does not affect the right of the purchaser to require the deduction of a good title, and to have the title verified by the production of other satisfactory evidence, if the deeds themselves are not produced (*a*). Conditions will not be construed to relieve the vendor from the liability of verifying the abstract by proper evidence, unless they are expressed in plain and unambiguous language to that effect.

Obligation of vendor to deduce good title not excluded by condition against production.

If the facts of a title are stated, and it is then stipulated that the purchaser shall take such title as those circumstances can confer upon the vendor, the purchaser will be bound to take the title, such as it is; but if the conditions state as a positive fact, and not as a conclusion of law from the circumstances detailed, that the vendor has a power to sell the fee, the purchaser is entitled to require the vendor to show his power to sell, as it may have arisen from separate and independent sources (*b*).

Statement that vendor has power to sell must be proved, although facts set out.

If a vendor is unable to procure the production of original deeds not being instruments of record, he should insert a condition to protect him from objection on that account.

Condition where vendor cannot produce original deed.

If a vendor is able to make a good title to a part only of the property which he has agreed to sell, or has a limited interest only in it, the purchaser, as a general rule (*c*), is entitled to take what the vendor can give him, with an abatement of his purchase-

Right of purchaser to abatement of purchase-money where there is a partial defect of title.

(*y*) Freme *v.* Wright, *ubi supra*.

(*z*) Duke *v.* Barnett, 2 Coll. C. C. 337.

(*a*) Southby *v.* Hutt, 2 M. & C. 207; Osborne *v.* Harvey, 7 Jur. 229.

(*b*) Johnson *v.* Smiley, 17 Beav. 223.

(*c*) The rule is of course liable to be modified by the terms of the contract, *e.g.*, by a condition enabling the vendor to rescind in case of objections being taken. See p. 32, *infra*.

money in respect of the remainder (*d*). This doctrine has been applied in the following cases, viz.:—(1) where on a sale of the fee simple it turned out that the vendor had a life estate only, with remainder to another in fee (*e*); (2) where on a sale of the fee simple it turned out that there was a prior life interest which the vendor could not get in (*f*); and (3) where on a sale of the entirety it turned out that the vendor had only an undivided moiety (*g*).

Not allowed where injustice would be done to vendor or third parties.

But the doctrine will not be applied if injustice would be thereby done to the vendor or to third parties. Thus, where land was settled on A. for life, with remainder to his sons in tail, with remainder to A. in fee, with a power of sale vested in another, and A. contracted to sell the fee simple as if it was his own, and the trustees refused to confirm the sale, it was held that the purchaser could not insist on a conveyance by A. of his life estate and ultimate remainder, on the ground (1) that it would be difficult to compute a just compensation, and (2) that the alienation of a partial interest would be prejudicial to some of the objects of the settlement.

Purchaser not bound to take part with abatement.

A purchaser, though entitled, cannot be compelled to take a part instead of the whole, unless the part which the vendor cannot give him is so insignificant that the want of it must be immaterial. It is the tendency of the Courts to hold that a purchaser is entitled to have that which he contracted for (*h*).

When notice of defective title precludes purchaser from objecting.

The legal implication arising out of the contract of sale, that the vendor must show a good title, may be rebutted by evidence that the purchaser knew that the title was defective before he entered into the contract; but if the contract expressly provides that the vendor

(*d*) Mortlock *v.* Buller, 10 Ves. 315.

(*e*) Barnes *v.* Wood, 8 Eq. 424.

(*f*) Nelthorpe *v.* Holgate, 1 Coll. 203; Barker *v.* Cox, 4 C. D. 464.

(*g*) Hooper *v.* Smart, L. R. 18 Eq. 683; M'Kenzie *v.* Hesketh, 7 C. D. 675; Burrow *v.* Scammell, 19 C. D. 175. In Wheatley *v.* Slade, 4 Sim. 126, it was said that specific performance with an abatement would not be allowed, where a large portion of the estate cannot be conveyed, but the decision is inconsistent with subsequent cases.

(*h*) Knatchbull *v.* Grueber, 3 Mer. 41, 146; *In re* Arnold, 14 C. D. 70.

shall show a good title, evidence of the purchaser's knowledge is inadmissible, as this would be allowing a written contract to be varied or contradicted by parol evidence (*i*).

As to leaseholds, including property held by underlease.

Purchaser of property held by lease or underlease cannot call for title to reversion.

Last receipt for rent to be evidence of performance of covenants in lease,

and of payment of superior rent and performance of covenants in superior lease.

On a sale of property held by lease or underlease for years, the purchaser has no right to call for the title to the freehold or leasehold reversion (*j*). He must assume, unless the contrary appears, that the lease or underlease was duly granted, and on the production of the receipt for the last payment due for rent under the lease or underlease before the date of actual completion of the purchase, he must assume, unless the contrary appears, that all the covenants and provisions in the lease or underlease have been duly performed and observed, and in the case of an underlease, that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to the date of the actual completion of the purchase (*k*).

Title to leaseholds begins with lease.

It follows that on a sale of leaseholds, the title will begin, in the absence of stipulation, with the lease, however recent in date. But the purchaser would be able to raise objections to its validity on grounds appearing on the face of it, or discovered *aliunde* (*l*), and if it is wished to preclude such objections there must be a special condition.

If it is held with other property under same lease, fact should be stated.

When property offered for sale is part of a larger property held under one lease, the fact should be stated in the particulars, as otherwise a purchaser might object on the ground that he would be liable to eviction under the condition of re-entry for breaches of covenant committed in respect of the remaining

(*i*) *Re* Gloag and Miller, 23 C. D. 20; Cato *v.* Thompson, 9 Q. B. D. 16.

(*j*) V. & P. Act, 1874, s. 2; Conveyancing Act, 1881, s. 3, sub-s. 1.

(*k*) *Ib.*, sub-ss. 4, 5.

(*l*) Jones *v.* Watts, 43 C. D. 574.

property. No such objection can be made if the fact is stated (*m*).

Purchaser has notice of usual covenants in lease, but there must be no misrepresentation.

A purchaser of leaseholds will be deemed to have notice of the covenants and provisions in the lease if they are usual ones, but not if they are unusual, unless an opportunity has been given him of inspecting the lease before the sale (*n*); and if the particulars contain any misrepresentation (*o*) or important omission, calculated to mislead a purchaser (*p*), he is not precluded from objecting merely because an inspection of the lease would have disclosed the real state of the case.

Renewable leaseholds.

On the sale of leaseholds which have been renewed from time to time, it may be necessary to negative the right of the purchaser to call for the production of the surrendered leases.

An under-lease should be described as such. If it is described as a lease, the contract will not be enforced.

If the property offered for sale is an under-lease, the fact should appear in the particulars or in the conditions, for if it is described as a lease the contract cannot be enforced (*q*). The purchaser has a right to assume that he will be under no liabilities except those created by the lease under which he holds, whereas, if there is a superior lease, he will be liable also to be evicted by the superior landlord in the event of any breach of the covenants in the superior lease. And it is apprehended that it would make no difference if the covenants in the two leases were identical, because, although the purchaser would be safe from eviction if he faithfully observed such covenants, he would, in the event of a breach, or an intended breach, have to settle with two landlords instead of one, and be to this extent in a worse position.

If the grantor of the lease holds a long term of years

It is considered that no objection could be made merely because the grantor of the lease, which is the subject of the purchase, was the owner not of the

(*m*) Walter *v.* Maunde, 1 J. & W. 181; Pattison *v.* Long, 6 Beav. 590; Camberwell and South London Building Society *v.* Holloway, 13 C. D. 754.

(*n*) Reeve *v.* Berridge, 20 Q. B. D. 523.

(*o*) Weston *v.* Savage, 10 C. D. 736.

(*p*) Jones *v.* Rimmer, 14 C. D. 588; *Re* Davis and Cavey, 40 C. D. 601.

(*q*) Darlington *v.* Hamilton, 1 Kay, 550; Blake *v.* Phinn, 3 C. B. 976; 16 L. J. C. P. 159.

freehold, but of a chattel interest only in the land, *e.g.*, a long term of years subject to a nominal rent, and free from any covenant or condition of re-entry (*r*). In such a case the instrument creating the term would create no liability by which the purchaser could be affected, directly or indirectly.

free from rent, or any covenant or condition of re-entry, objection does not apply.

If leasehold property has been demised to a mortgagee for the term created by the lease, except the last few days, and the mortgagee, or some person deriving title under him, puts it up for sale, describing it as held for the whole term, without disclosing that the last few days are outstanding, this is a misdescription which invalidates the sale (*s*).

It is a misdescription to describe property as held under a lease, if the last few days of the term are outstanding.

If property is sold as an under-lease, the purchaser will be considered to have constructive notice of the covenants in the original lease, except any which may be of an unusual character (*t*); and it is not an objection to the title that the under-lease may become forfeited by the breach of the covenants in the original lease (*u*).

Purchaser of an under-lease has constructive notice of usual covenants in original lease.

When the vendor of property held by under-lease is in a position to produce the superior lease, it is desirable as a general rule that he should give intending purchasers the opportunity of inspecting it, as well as the under-lease, at or before the sale (*x*).

Inspection of superior lease should be offered.

On the sale of an estate held on lives, the vendor must supply the purchaser (at the latter's expense) with the requisite evidence in proof of the existence and correct ages of the *cestuis que vie*.

Property held on lives.

(*r*) See Darlington *v.* Hamilton, *ubi supra*.

(*s*) Madeley *v.* Booth, 2 De G. & Sm. 718; *In re* Beyfus and Master's Contract, 39 C. D. 116. In the last-mentioned case the Court of Appeal approved of Madeley *v.* Booth, which had been dissented from by Jessel, M. R., in Camberwell, &c., Society *v.* Holloway, 13 C. D. 754. It will be observed, however, that both in Madeley *v.* Booth, and in Beyfus and Master's Contract, there does not seem to have been any clause in the mortgage deed declaring that the mortgagor should hold the outstanding days of the term in trust for the purchaser. If there had been such a clause, it is apprehended that the title would have been good, as a vesting order might have been obtained under the Trustee Act.

(*t*) Flight *v.* Barton, 3 M. & K. 282; Cosser *v.* Collings, *ib.* 283; Hyde *v.* Warden, 3 Ex. Div. 72; Reeve *v.* Berridge, 20 Q. B. D. 523.

(*u*) Hayford *v.* Criddle, 22 Beav. 477.

(*x*) Smith *v.* Watts, 4 Drew. 338.

As to tithes, enfranchised copyholds, enclosure allotments, exchanges.

Title to tithes.

In the absence of stipulation, the title to tithes or tithe rent-charge held as a lay property must commence with the original grant from the Crown, and then the title should be taken up and regularly deduced for a period of forty years previous to the time of sale (*y*).

Enfranchised copyholds.

On the sale of property formerly copyhold which has been enfranchised, the purchaser is not entitled to call for the title to make the enfranchisement (*z*). If the enfranchisement has been made under the Copyhold Acts, the particulars or conditions should except from the sale the minerals and other rights reserved by those Acts to the lord of the manor (*a*).

Allotments.

In the absence of express stipulation, on the purchase of allotments under an Inclosure Act, the title to the property in respect of which the allotment is made must be deduced down to the period of the award, and, if the allotment is made in respect of lands held under different titles, all the titles must be shown (*b*); and such allotments are freehold, copyhold, or leasehold, according to the tenure of the land in respect of which the allotment is made (*c*), unless, in the case of copyhold land, the lord of the manor consents to the allotment being freehold, and a declaration to this effect is made in the award (*d*).

Exchanges.

Where an exchange is made under the powers of the General Inclosure Acts, the title to the land given in exchange is transferred to the land taken in exchange; and consequently the title to be deduced to a purchaser in such a case is the title to the land given in exchange, up to the date of such exchange, and afterwards the title to the land taken in exchange.

(*y*) The Vendor and Purchaser Act, 1874, applies to contracts for sale of incorporeal hereditaments. See 13 & 14 Vict. c. 21, s. 4, providing that "land" includes "hereditaments," and Jones *v.* Watts, 43 C. D. 574.

(*z*) Conveyancing Act, s. 3, subs. (2).

(*a*) Upperton *v.* Nickolson, L. R. 6 Ch. 436.

(*b*) Dart, 326.

(*c*) 8 & 9 Vict. c. 118, s. 94.

(*d*) 10 & 11 Vict. c. 111, s. 6.

Easements and restrictive covenants.

Easements and restrictive covenants an objection to title. In what cases knowledge of purchaser precludes objection.

The existence of easements, restrictive covenants, or other burdens derogating from the absolute ownership of the property, constitutes a valid ground of objection to the title, if the purchaser did not know of them at the date of the contract (*e*). And if a vendor has expressly agreed to make a marketable title, or to sell free from incumbrances, he is bound to procure a release of all burdens of this kind, whether the purchaser was aware of them or not (*f*).

Easement must be disclosed, notwithstanding general condition.

A general condition, that the property is sold subject to all easements affecting the same, does not exempt the vendor from the obligation of disclosing an easement of which he was aware (*g*).

Restrictive covenants do not bind purchaser without notice or any person claiming under him with notice, but subsequent purchaser cannot be compelled to rely on predecessor's want of notice.

As to restrictive covenants, it will be borne in mind that they do not run with freehold land at law, and that, after the land affected by them has been acquired by a *bonâ fide* purchaser for value without notice, they cannot be enforced in equity either against that purchaser or against any person claiming title under him, whether the latter has notice of them or not. But a purchaser who after the contract discovers the existence of covenants of this kind cannot be compelled to complete, because his title will depend on the vendor's want of notice, and he may find that he has bought a law suit (*h*).

As to other incumbrances which cannot be discharged.

When property liable to charges which cannot be paid off.

If the property is subject to any incumbrance which cannot be discharged, the conditions should provide for this defect in the title. All the facts connected with such incumbrance should be accurately stated; and, if it is not likely to be enforced, it may be sufficient to bind the purchaser to make no objection on that account; and in other cases, it may be expedient

(*e*) Ellis *v.* Rogers, 29 C. D. 661; *In re* Ebsworth and Tidy's Contract, 42 C. D. 23.

(*f*) Cato *v.* Thompson, 9 Q. B. D. 616.

(*g*) Heywood *v.* Mallalieu, 25 C. D. 357.

(*h*) Sug. 753; Nottingham Patent Brick Company *v.* Bowles, 16 Q. B. D. 778.

to offer an indemnity to the purchaser, and to provide that he shall be satisfied therewith: but it is very important that the terms and nature of the indemnity should be clearly stated. In the absence of special contract, a purchaser cannot be compelled to take a defective title with an indemnity, nor can a vendor be compelled to give an indemnity (*i*).

Power of Court to provide for incumbrances and to free land therefrom.

The Conveyancing Act, 1881, enables the Court to make an order discharging land from an incumbrance on sufficient provision being made to meet it in the manner mentioned in the Act (*j*).

Tithe rent-charge and land tax are not incumbrances.

It will be borne in mind that tithe, or tithe rent-charge, and land tax, are not incumbrances, so that if nothing is said about them in the contract, the purchaser takes the property subject to them, and can make no objection on that account.

As to stamping of documents.

Purchaser may require deeds to bear proper stamp.

A purchaser is entitled to require that all the title deeds bear the proper stamp (*k*). If, therefore, any deed executed before the 16th May, 1888 (*l*), is unstamped or insufficiently stamped, the conditions should provide that the expense of stamping shall be borne by the purchaser, if he requires it to be done.

As to identification of parcels.

Identification.

It is a necessary part of the deduction of a good title to provide satisfactory evidence of the identity of the parcels. To do this completely is often difficult, so that some provision qualifying the purchaser's right in this respect is generally introduced. In a case where it was provided "that no further evidence of identity shall be required than what is afforded by the abstract or the documents therein abstracted," and the descrip-

(*i*) Balmanno *v.* Lumley, 1 V. & B. 224; Paton *v.* Brebner, 1 Bligh, 66; Aylett *v.* Ashton, 1 My. & Cr. 105; Bainbridge *v.* Kinnaird, 9 Jur. 862.

(*j*) Sect. 5.

(*k*) See Whiting to Loomes, 14 C. D. 822; 17 *ib.* 10. But see *Ex parte* Birkbeck, &c. Society, 24 C. D. 119.

(*l*) Such a condition would be void as to any deed dated after that day. 51 Vict. c. 8, s. 20.

tions in the documents differed among themselves and from the descriptions in the particulars of sale, the purchaser was held entitled to further proof of identity (*m*). And in another case, where it was provided "that the purchaser shall not require any further proof of identity than is furnished by the title deeds themselves," Kindersley, V.-C., observed, "I am of opinion that under this condition, if the deeds do not show identity, the purchaser cannot call for any other evidence; but that, on the other hand, the contract is in effect, that the deeds shall show identity, so that if they do not, a good title is not made" (*n*).

As to the description of the property.

What the particulars should state.

The particulars of sale, or on a sale by private contract the agreement itself, should accurately describe the house or land which is the subject of sale, and, if the vendor's interest is less than the fee simple, the nature of that interest. If the property is let to a tenant, the nature and terms of the tenancy, and the rent paid by him, should be stated. If it is sold subject to any charge or obligation, this also should be stated; in short, the particulars should contain all such information as is necessary to apprise the purchaser of the real nature of the property put up for sale. There must be no wilful concealment of anything which it is material for the purchaser to know, no ambiguity in the description which is likely to mislead him.

Rule of equity as to right of purchaser in case of misdescription.

Before the Judicature Act, a misdescription rendered the sale void at law, but courts of equity would oblige the purchaser to accept the property with an abatement of the purchase-money by way of compensation, in any case where he would thereby get the substantial benefit of his contract (*o*). The rules of equity are now the rules of every branch of the Supreme Court of Judicature.

(*m*) Fowler *v.* Hartropp, 6 Beav. 476.

(*n*) Curling *v.* Austin, 2 D. & Sm. 129, 135.

(*o*) Halsey *v.* Grant, 13 Ves. 79.

Condition as to compensation for misdescriptions.

It is usual, however, to make express provision for misdescriptions by a condition of sale. One in common use provides that misdescriptions in the particulars shall not annul the sale, but compensation shall be made in respect thereof by either party, as the case may require, the amount of such compensation to be settled by two referees or their umpire.

Condition does not apply where mistake is wilful or affects the substance of the contract.

It is settled that this condition applies only to such errors as in its absence would invalidate the sale at law (*p*). It is also settled that a vendor cannot avail himself of this condition where the mistake is wilful and therefore amounts to a fraud, or where the misdescription is on a material and substantial point so far affecting the subject of the contract that it may be reasonably supposed that but for such misdescription the purchaser would not have entered into the contract at all. In such a state of facts the purchaser may be considered as not having purchased the thing which is the subject of sale (*q*).

Error as to quantity.

Where the property is described as containing a certain quantity without any qualification, and the actual quantity turns out to be less, the purchaser is, as a general rule, entitled to an abatement out of his purchase-money for the deficiency, whether there is, or is not, the usual condition as to compensation. For though the land is not sold professedly by the acre, the presumption is that in fixing the price regard is had to the quantity which both suppose the estate to consist of, and therefore a rateable abatement of the price will probably leave both parties in nearly the same relative situation in which they would have stood if the quantity had been originally known. But the abatement will not be rateable, if it appears that the parties have calculated the value on some other basis (*r*).

Effect of expressions "or there-

Qualifying words such as "or thereabouts," "more or less," or "by estimation," will only cover slight

(*p*) Leslie *v.* Thomson, 9 Hare, 268.

(*q*) Flight *v.* Booth, 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66.

(*r*) Hill *v.* Buckley, 17 Ves. 394; *Re* Fawcett and Holmes, 42 C. D. 150.

errors. Thus a purchaser has been compelled to accept without compensation property described as containing by estimation forty-one acres, more or less, but really containing only thirty-six acres (*s*); but not a farm described as containing "by estimation 349 acres, or thereabouts, be the same more or less," but which fell short of that quantity by 110 acres (*t*); nor property described as containing 753 square yards or thereabouts, but in fact containing only 573 square yards (*u*).

"abouts," "more or less," "by estimation."

As regards patent or obvious defects in the state and condition of the property, such as a purchaser with ordinary diligence could discover for himself, *e. g.*, its want of repair, or bad state of cultivation, or the existence of a footpath over a field (*x*), the vendor is not bound to mention them, but he must not studiously conceal them.

Vendor not bound to disclose patent defects.

If property is described by its usual known description, and there is no fraud on the vendor's part, the purchaser is not entitled to compensation, though it may turn out that the property is not what from its description it might naturally be supposed to be. Thus, where a house at Brighton was sold as No. 39, Regency Square, and it was afterwards discovered that the house, though always named 39, Regency Square, was not actually in the Square, but in a side street communicating with the Square, this was held to be no misdescription (*y*).

Purchaser not entitled to compensation where description though correct, misleads him, there being no fraud on vendor's part.

Vague and indefinite representations with respect to what is a mere matter of opinion do not entitle a purchaser to relief. Thus, where land was described as uncommonly rich water-meadow, and it turned out that though water-meadow it was imperfectly watered, it was held that the purchaser was not entitled to compensation (*z*). But if the vendor takes upon himself

Indefinite representations as to matters of opinion do not entitle purchaser to compensation—*secus* where the representation is as to a matter of fact.

(*s*) Winch *v.* Winchester, 1 V. & B. 375.
(*t*) Portman *v.* Mill, 2 Russ. 570.
(*u*) Whittemore *v.* Whittemore, L. R. 8 Eq. 603.
(*x*) Oldfield *v.* Round, 5 Ves. 508.
(*y*) White *v.* Bradshaw, 16 Jur. 738.
(*z*) Scott *v.* Hanson, 1 R. & M. 128. It is probable that this decision would not be followed at the present day, as there seems to have been a positive mis-statement of a matter of fact.

to make a specific and definite representation as to a matter of fact, he is bound to make it good. He must not make an inaccurate statement, and then say, "It was the duty of the purchaser before he bid to institute inquiries and correct mistakes and misdescriptions in the particulars," nor may he make an ambiguous statement by which a purchaser is likely to be deceived.

Instances of cases in which purchaser has been held entitled to compensation.

The following are cases in which it has been held that a purchaser was entitled to compensation, either under the general rule of equity, or under the usual condition, viz:—

Where a house described as in good repair turned out to be very much out of repair, and the defect was not apparent except on minute investigation (*a*).

Where property was described as "well supplied with water," and it turned out that the supply was from waterworks on payment of water rates, the Court being of opinion that the purchaser was led by the description to believe that there was a supply of water on the property itself (*b*).

Where property was described as customary leasehold, and renewable every twenty-one years on payment of a customary fine, and it turned out that there was no right of renewal (*c*).

Where on the sale of a manor it was stated that the fine was two years' improved value, and it turned out that this was not the case (*d*).

Where property was described as in the occupation of the owners of a certain colliery, their under-tenants or workmen, but it was not stated (as the fact was) that such owners were entitled to use the cottages for their workmen rent free (*e*).

Where land is subject to a reservation of mining or other rights, unless the Court is satis-

(*a*) Dyer *v.* Hargrave, 10 Ves. 505. See also Grant *v.* Munt, Cooper, 173.

(*b*) Leyland *v.* Illingworth, 2 De G. F. & J. 248.

(*c*) Painter *v.* Newby, 11 Hare, 26.

(*d*) Hoy *v.* Smithies, 22 Beav. 510.

(*e*) Brandley *v.* Plummer, 2 Drew. 427.

fied that there is no subject-matter for the reservation to act on, or that all legal right to exercise it has ceased (*f*).

Where the particulars of sale mentioned the premises as being then let at a rental of £30 per annum, and it was afterwards discovered that all the rates and taxes were by agreement payable by the landlord (*g*).

Instances where purchaser was held entitled to rescind.

The following are cases in which it has been held that the purchaser was entitled to rescind the contract, and was not bound to accept compensation:—

Where an estate was described as freehold, and it turned out to be leasehold for 4,000 years (*h*).

Where, on a sale of a leasehold house, the particulars stated that the lessee was restricted from carrying on "offensive trades or the trade of a coffee-house keeper or working hatter," and it turned out that the lease prohibited not only offensive but also a great number of inoffensive trades (*i*).

Where the subject-matter of the contract was described as a "free public-house," and it turned out that the lease contained a proviso that the lessee should take all his beer from a particular brewery (*k*).

Where the property was described as seven houses on a *ground* rent lease at forty guineas per annum, and it turned out that they were let on lease at a *rack* rent of forty guineas (*l*).

Where property was sold as copyhold, and it was proved that part of it was freehold (*m*). The result would of course be the same if property put up as freehold proved to be copyhold.

(*f*) Seaman *v.* Vawdrey, 16 Ves. 390; Martin *v.* Cotter, 3 Jo. & Lat. 496; Lyddall *v.* Weston, 2 Atk. 19. Whether, however, an outstanding right to minerals is a proper subject of compensation, see Powell *v.* Smithson, 20 L. T. 105.

(*g*) Bos *v.* Helsham, L. R. 2 Exch. 72. See also Barnes *v.* Wood, L. R. 8 Eq. 424.

(*h*) Crewe *v.* Corp, 9 Ves. 368.

(*i*) Flight *v.* Booth, 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66.

(*k*) Jones *v.* Edney, 3 Camp. 285.

(*l*) Stewart *v.* Alliston, 1 Mer. 26.

(*m*) Ayler *v.* Cox, 16 Beav. 23.

Where property sold as freehold was formerly copyhold, and had been enfranchised under the Copyhold Acts, which reserved the minerals to the lord of the manor (*n*).

Where a lot was described as a first-rate building plot of land, and it turned out that it was subject to a right of way of which no notice was taken in the particulars and plan (*o*).

Where the property was subject to easements materially affecting its enjoyment (*p*), or to restrictive covenants (*q*).

Where a house was described as brick-built, and it was proved to be built partly of brick and partly of timber, and some parts were composed only of lath-and-plaster (*r*).

Where the particulars described the property as containing sixty-five acres of fine oak timber trees, the average size of which approached sixty-five feet, and the size was in fact considerably below that average (*s*).

Where property was described as No. 58, on the north side of Pall Mall, and opposite Marlborough House, and it turned out that the house was in fact not in Pall Mall, but was situate behind No. 57, Pall Mall, having its entrance by a separate passage through the ground floor of No. 57 (*t*).

Where the property was described as freehold ground rents, and it turned out that some of the rents were rents covenanted to be paid by the lessees of houses for the right of using a public pleasure ground, and not freehold ground rents within the meaning of the particulars (*u*).

(*n*) Upperton *v.* Nickolson, L. R. 6 Ch. 436.

(*o*) Dykes *v.* Blake, 4 Bing. N. C. 463; 7 L. J. (N. S.) C. P. 282.

(*p*) Shackleton *v.* Sutcliffe, 1 D. & Sm. 609.

(*q*) Phillips *v.* Caldcleuch, L. R. 4 Q. B. 159; Cato *v.* Thompson, 9 Q. B. D. 616; Higgins and Hitchman's Contract, 21 Ch. D. 95.

(*r*) Powell *v.* Double, MS., cited Sug. V. & P. 23.

(*s*) Lord Brooke *v.* Roundthwaite, 5 Hare, 298.

(*t*) Stanton *v.* Tattersall, 1 Sm. & Giff. 529.

(*u*) Evans *v.* Robins, 33 L. J. (N. S.) Ex. 68.

Where, on a sale of redeemed land-tax, it was stated to be charged on three houses, and it turned out that the whole amount was not charged on the three houses, but consisted of three smaller sums each charged on one house (*x*).

Where the purchaser reasonably gathered from the particulars that the property was free from any ground rent, and it turned out that it was liable to a ground rent of £43 (*y*).

Where property was described as "leasehold business premises," and it appeared that the lease contained covenants restricting the lessee from carrying on certain businesses (*z*).

As a general rule, purchaser may, if he thinks fit, take defective property with compensation.

It will be borne in mind that in many of the above-mentioned cases in which it was held that a purchaser was entitled to compensation he might have elected to rescind, and that in many of the cases where he was held entitled to rescind he might have elected to insist on specific performance with compensation, it being a general rule that a purchaser is entitled if he thinks fit to take what the vendor can give him with compensation for the difference.

Right of purchaser to relief may be rebutted by proof of knowledge.

The right of the purchaser to relief for a misdescription may be rebutted by showing that he was aware of the actual state of the property at the time of the purchase (*a*). But such knowledge must be proved, and will not be presumed from circumstances which render it probable that he possessed it. Thus it has been held that a purchaser cannot be presumed to know the measurements of a piece of land because it has been in his occupation (*b*), or to know of easements affecting it because he lived in the neighbourhood (*c*).

Compensation may be claimed after

After several conflicting decisions it is now settled that compensation may be claimed under the ordinary

(*x*) Cox *v.* Coventon, 31 Beav. 378.
(*y*) Jones *v.* Rimmer, 14 C. D. 588; Brewer *v.* Browne, 28 C. D. 309.
(*z*) *In re* Davis and Cavey, 40 C. D. 601.
(*a*) Dyer *v.* Hargrave, 10 Ves. 505; Farebrother *v.* Gibson, 1 D. & J. 602.
(*b*) King *v.* Wilson, 6 Beav. 124.
(*c*) Shackleton *v.* Sutcliffe, 1 D. & S. 609.

completion, under condition, unless contrary expressed.

condition after completion, unless the contrary is expressed (*d*).

Condition negativing right to compensation.

Of late years a condition to the effect that the description shall be taken as correct, and that an error of description shall neither annul the sale nor give a right to compensation, has come into common use, particularly on sales of small properties. It has been held that such a condition applies only to physical errors (*e*), *i. e.*, errors in the description of the material thing which is the subject of sale, and not to errors which could not have been discovered by an inspection of the property. It has also been held that, in the event of a serious deficiency in quantity, this condition, while it prevents the purchaser from insisting on specific performance with compensation, does not enable the vendor to enforce specific performance without it (*f*).

Applies only to physical errors,

and cannot be relied on where mistake is serious.

Whether vendor can in any case claim compensation for mistake under common condition.

A misdescription is generally one which makes the property appear more valuable than it really is. But it may happen that a mistake is made to the prejudice of the vendor. Suppose, for example, that the acreage is largely understated, or that the property is described as subject to some obligation materially diminishing its value, which does not in fact exist. If, in a case of this kind, the misdescription is the result of a *bonâ fide* mistake made under such circumstances as to be excusable, and it appears that the contract has been entered into by both parties and the price fixed on the basis of the incorrect statement, equity would not enforce specific performance against the vendor except on the terms of the purchaser paying an increased purchase-money. And this would *à fortiori* be so, if there is the usual condition providing that compensation for misdescriptions shall be paid to as well as by the vendor (*g*).

(*d*) Bos *v.* Helsham, L. R. 2 Ex. 72; Turner *v.* Skelton, 13 C. D. 130; Palmer *v.* Johnson, 13 Q. B. D. 351.

(*e*) *In re* Beyfus and Master's Contract, 39 C. D. 116.

(*f*) Cordingley *v.* Cheeseborough, 4 D. F. & J. 379; *Re* Terry and White's Contract, 32 C. D. 14.

(*g*) Leslie *v.* Thomson, 9 Hare, 268; Calverley *v.* Williams, 1 Ves. jun. 210; Baxendale *v.* Seale, 19 Beav. 601; Price *v.* North, 2 Yo. & Coll. 620.

As to land in Middlesex or Yorkshire.

If the land is situate in Middlesex or in Yorkshire, the vendor should ascertain before he puts up the property for sale that all deeds and wills affecting it have been duly registered under the Local Registry Acts; and if any have not been so registered, a condition precluding objection on that account should be inserted (*h*).

Condition where documents not registered in county registry.

As to time for delivery of abstract and for sending in requisitions, and condition enabling vendor to rescind on account of objections taken.

A condition fixing the time within which an abstract should be delivered to the purchaser was formerly usual, but is now more commonly omitted. If no time is fixed, the purchaser may serve a notice on the vendor fixing a reasonable time for the delivery of the abstract, and if such notice is not complied with may rescind the contract (*i*).

Time within which abstract should be delivered.

A condition that a purchaser shall make his requisitions and objections within a given time, and that all objections not made within that time shall be considered to be waived, is seldom omitted. Such a condition applies only from the delivery of a perfect abstract; *i.e.*, an abstract which sets out with sufficient fulness every instrument which forms part of the vendor's title, and states every material fact (*j*). An objection may be raised after the prescribed period arising out of any evidence called for within that time (*k*), or in respect of matters discovered *aliunde* (*l*). Nor will the condition be binding when the title is manifestly bad on the face of the abstract, *e.g.*, where the vendor is a trustee, and the time for sale has not arrived (*m*). If a vendor does not deliver a perfect

Condition requiring objections to be made within a given time applies from delivery of perfect abstract.

Does not bind where title clearly bad,

nor where

(*h*) See dissertation on "Searches for incumbrances," *infra*.

(*i*) Compton *v.* Bagley, (1892) 1 Ch. 313.

(*j*) Oakden *v.* Pike, 11 Jur. N. S. 666; Blacklow *v.* Laws, 2 Hare, 40.

(*k*) Blacklow *v.* Laws, *ubi supra*.

(*l*) Ward *v.* Dickson, 5 Jur. N. S. 345.

(*m*) Want *v.* Stallibrass, 8 Exch. 175.

abstract not delivered in time.

abstract within the time specified by the conditions, the purchaser will not be bound to send in his objections within the time limited for that purpose (*n*).

Does not apply to matter of conveyance.

The existence of an incumbrance on the property, which the vendor has a present right to pay off, or of an outstanding estate, of which the vendor has a present right to call for a conveyance, is not a ground of objection to the title. The vendor is bound to pay off the incumbrance or to get in the outstanding estate as a matter of conveyance, whether the purchaser has made a requisition to that effect within the time prescribed by the condition above referred to or not (*o*).

Recovery of deposit, &c.

If a purchase goes off on account of a defect of title the purchaser may recover the deposit, with interest from the time of payment, as well as all his costs in investigating the title and in searching for judgments, &c. (*p*). The purchaser, moreover, would seem in such case to have a lien on the estate for the deposit (*q*).

Condition enabling the vendor to rescind in case of objections made.

It is now a common condition that the vendor may annul the sale on the purchaser insisting on any objection or requisition which the vendor shall be unable or unwilling to remove, and that in such case the vendor shall return the deposit, but without interest, and that the purchaser shall have no claim on the vendor for the expenses of investigating the title, or other expenses. The following points have been decided with respect to this condition, viz.:—

Notice to rescind need not give time to waive the objection.

1. That if a purchaser insists upon a requisition, after being informed that the vendor is unable to comply with it, the vendor may rescind the sale by notice, and such notice need not give the purchaser a time within which to waive his requisition (*r*).

Vendor must show some reasonable ground for "unwilling-

2. That if the vendor seeks to rescind as being "unwilling," there must be some reasonable ground for unwillingness, *e.g.*, that to comply with the requi-

(*n*) Upperton *v.* Nickolson, L. R. 6 Ch. 436; Southey *v.* Hutt, 2 M. & C. 201.

(*o*) Townsend *v.* Champernown, 1 Y. & J. 449; Avarne *v.* Brown, 14 Sim. 303; Sidebottom *v.* Barrington, 3 Beav. 524; Savory *v.* Underwood, 23 L. T. R. 141.

(*p*) Pounsett *v.* Fuller, 17 C. B. 660; Sikes *v.* Wild, 7 Jur. N. S. 1280.

(*q*) Wythes *v.* Lee, 3 Drew. 396.

(*r*) Duddell *v.* Simpson, L. R. 2 Ch. 102.

sition would involve trouble and expense (*s*). But he is not bound to state his reasons, and in the absence of evidence to the contrary it will be assumed that he has acted *bonâ fide* and on reasonable grounds (*t*). If the property is subject to a mortgage, a vendor must pay it off, and he cannot rescind under this condition (*u*).

ness" to comply with requisition.

3. That a vendor may avail himself of this condition, where an objection is made to the sufficiency of his title as regards a part only of the property, and that he cannot in that case be compelled to complete as to the remainder with an abatement (*x*). On the other hand, he will not be allowed to rescind, if he has put up property for sale, knowing, or under circumstances in which he must be presumed to know, that as regards the whole or a portion of it he has no title at all, or that he has only a partial interest in it (*y*).

Vendor can rescind when objection is made as to part.

Not if he knows his title is defective.

Where there is a condition providing that errors or omissions in the particulars shall be the subject of compensation, and also a condition enabling the vendor to rescind in case of an objection being made to the title, a case falling within the former condition may also be a defect of title within the latter, so that if a claim to compensation is made, the vendor may rescind (*z*). Whether it is so or not depends on the particular circumstances of each case (*a*).

When condition applies to misdescriptions.

It has been held that the right of rescinding is waived if the vendor expresses his willingness to remove objections, or enters into correspondence with that view (*b*). To meet this, it is usual to insert in the

Vendor waives right to rescind by attempting to remove objection.

(*s*) *In re* Dames, 29 C. D. 626; Mawson *v.* Fletcher, L. R. 6 Ch. 91.

(*t*) *In re* Starr-Bowkett Building Society and Sibun's Contract, 42 C. D. 375.

(*u*) Greaves *v.* Wilson, 25 Beav. 290; Jackson *v.* Oakshott, 14 C. D. 851.

(*x*) Heppenstall *v.* Hose, W. N. 1884, p. 199.

(*y*) Bowman *v.* Hyland, 8 C. D. 588; Nelthorpe *v.* Holgate, 1 Coll. 203.

(*z*) Ashburner *v.* Sewell, (1891) 3 Ch. 405.

(*a*) Hoy *v.* Smithies, 22 Beav. 510; Painter *v.* Newby, 11 Hare, 26; Mawson *v.* Fletcher, L. R. 6 Ch. 91; *Re* Terry and White's Contract, 32 C. D. 14. See also Cordingley *v.* Cheeseborough, 4 D. F. & J. 379.

(*b*) Tanner *v.* Smith, 10 Sim. 410; Morley *v.* Cook, 2 Ha. 106; *In re* Arbib and Class's Contract, (1891) 1 Ch. 601.

condition the words "notwithstanding any attempt to remove the same," or words to that effect.

When taking possession is a waiver of objections to the title.

Taking possession when an acceptance of title.

The taking of possession by the purchaser is an equivocal act, but does not of itself amount to an acceptance of the title. In every case it is a question depending upon the circumstances whether the conduct of the purchaser is inconsistent with an intention to call for the title, or to insist on objections to it (*c*). In *Fleetwood* v. *Green* (*d*), specific performance was decreed against a purchaser who had remained in possession for a considerable time after the delivery of an abstract without making any objection; and in *Burnell* v. *Brown* (*e*), a purchaser was held to have waived any objection on the ground of the property being subject to a right of sporting, by taking possession with knowledge of the existence of such right.

In a recent case it was laid down that if a contract contains no stipulation that possession may be taken before completion, and the purchaser takes possession, knowing that there are defects of title which are irremoveable, the taking of possession is a waiver, but not so if the defects are removeable (*f*).

As to the time for completing the purchase.

Day for completing the purchase.

The contract should name the day on which the purchase is to be completed.

When time is of the essence of the contract.

In equity the time fixed for completion is held to be of the essence of the contract only in cases of express stipulation or necessary implication (*g*). If the property is of a wasting or precarious nature, or is required for immediate occupation or use, there would be grounds for such an implication (*h*). On the other

(*c*) Simpson *v.* Sadd, 4 De G. M. & G. 672.

(*d*) 15 Ves. 594.

(*e*) 1 Jac. & W. 168. See also Blatchford *v.* Fitzpatrick, 6 Beav. 233.

(*f*) *Re* Gloag and Miller's Contract, 23 C. D. 320.

(*g*) Parkins *v.* Thorold, 16 Beav. 59. For an instance of express stipulation, see Hudson *v.* Temple, 29 Beav. 536.

(*h*) Titley *v.* Thomas, L. R. 3 Ch. 61.

hand, a stipulation for payment of interest by the purchaser, in case the contract is not completed on the day, would raise a contrary inference (*i*).

Either party may, if the other is guilty of delay, fix a time for completion by reasonable notice.

If, where time is not originally of the essence of the contract, either party is guilty of unnecessary delay, the other party may give him a written notice limiting a reasonable time within which the thing required to be done must be done, and that, in case of default, the contract will be treated as at an end (*k*). But the notice given must be a reasonable one (*l*).

If vendor has a bad title, purchaser need not give him time to acquire a good one.

It is assumed in the preceding paragraph that the thing required to be done is something within the power of the party to do, *e. g.*, the obtaining of some obtainable evidence, or the procuring of some person to concur in the conveyance whose concurrence the vendor is entitled to insist on (*m*). But if a person agrees to sell property which he can neither convey nor compel a conveyance of from other parties, the purchaser may at once repudiate the contract, without waiting to see if the vendor can procure some third party to join (*n*).

Vendor may cure a defect of title at any time before contract is repudiated on that account.

A vendor having a bad title at the date of the contract may cure the defect at any time before the day fixed for completion, or even afterwards (*o*), provided that the purchaser has not in the meantime repudiated the contract on that account, which, as above mentioned, he is at liberty to do.

As to interest on the purchase-money.

Rule as to interest in the absence of stipulation.

In the absence of express stipulation, the purchaser is liable to pay interest on the purchase-money from the day fixed for completion, and is entitled from the same time to receive the rent. If, however, the

(*i*) Webb *v.* Hughes, L. R. 10 Eq. 281.

(*k*) Taylor *v.* Brown, 2 Beav. 183; Nott *v.* Riccard, 22 Beav. 307.

(*l*) Wells *v.* Maxwell, 32 Beav. 408; Green *v.* Sevin, 13 C. D. 589.

(*m*) Hatton *v.* Russell, 38 C. D. 334.

(*n*) Forrer *v.* Nash, 35 Beav. 167; Brewer *v.* Broadwood, 22 C. D. 105; *Re* Bryant and Barrington's Contract, 44 C. D. 218; Bellamy *v.* Debenham, (1891) 1 Ch. 412.

(*o*) Wynn *v.* Morgan, 7 Ves. 202; Mortlock *v.* Buller, 10 Ves. 315; Hoggart *v.* Scott, 1 R. & M. 293.

purchase is not completed on that day, owing to the vendor's fault or inability to make a good title, the purchaser will be bound to pay interest only from the time when a good title was first made (*p*), unless in the meantime he has entered into possession or receipt of the rents and profits (*q*), or exercised acts of ownership (*r*), in which case interest will run from the date of his so doing. And even if he takes possession, he may free himself from the payment of interest by providing himself with the money and giving notice that it is lying idle (*s*). The rate of interest is generally 4 per cent. (*t*).

Usual condition as to payment of interest.

It is usual to insert an express condition making the purchaser liable to the payment of interest if the purchase is not completed on the appointed day (*u*). In *De Visme* v. *De Visme* (*x*), there was this condition, and also a condition that the abstract should be delivered at a certain time. The vendor did not deliver an abstract at the time fixed, and it was held that the purchaser was liable to interest only from the time a good title was shown. But in more recent cases, the omission to deliver a complete abstract at the proper time has been held insufficient to disentitle the vendor to the benefit of the condition; and it is now settled that where the delay, however long, is occasioned by the state of the title, and is not wilful on the vendor's part, the condition applies, and interest is payable (*y*); and the purchaser cannot relieve himself from the interest by setting aside the purchase-money, and giving notice of the appropriation to the vendor (*z*).

What is "wilful default."

The term "wilful" merely means that the person to

(*p*) Esdaile *v.* Stephenson, 1 Sim. & Stu. 122; Jones *v.* Mudd, 4 Russ. 118.

(*q*) Fludyer *v.* Cocker, 12 Ves. 25.

(*r*) Ballard *v.* Shute, 15 C. D. 122.

(*s*) Dyson *v.* Hornby, 4 De G. & Sm. 481; Regent's Canal Company *v.* Ware, 23 Beav. 575.

(*t*) Wallis *v.* Sarrell, 5 De G. & Sm. 429.

(*u*) See Kershaw *v.* Kershaw, L. R. 9 Eq. 56.

(*x*) 1 Mac. & G. 336; Weddall *v.* Nixon, 17 Beav. 160; Robinson *v.* Skelton, 12 Beav. 363.

(*y*) Sherwin *v.* Shakspeare, 5 De G. M. & G. 517; Vickers *v.* Hand, 26 Beav. 630; Tewart *v.* Lawson, 3 S. & G. 307; Bannerman *v.* Clark, 3 Drew. 632.

(*z*) *In re* Riley to Streatfield, 34 C. D. 386.

whose action the term is applied is a free agent and knows what he is doing. If, therefore, a vendor, knowing that a contract is to be completed on a certain day, goes abroad just before that day, this is wilful default, so as to deprive him of the right to interest under the usual condition (*a*).

As to title-deeds.

Deeds to be delivered to purchaser, unless they relate to other property of vendor.

All the deeds in the vendor's possession relating to the property sold, and to no other property, must be delivered to the purchaser on the completion of the purchase, however ancient such deeds may be (*b*). If the deeds relate to other property of the vendor, however small in value, he is entitled to retain them (*c*).

Vendor who has given a covenant for production to former purchaser entitled to indemnity on handing over deeds.

If the vendor has, on a previous sale of part of the property to which the deeds relate, given to the then purchaser a covenant for their production, under which he will remain personally liable after he has handed them over, he cannot on that account retain the deeds as against the subsequent purchaser, but he may require a covenant from the latter to perform the covenant for production (*d*).

Vendor retaining deeds must give acknowledgment, and unless a trustee, an undertaking for safe custody.

A vendor retaining deeds is bound either to covenant for their production, or to give to the purchaser a statutory acknowledgment of his right to the production and delivery of copies of them, and also (if he is a beneficial owner) an undertaking for their safe custody (*e*). If he is a trustee, it is the usual practice to stipulate that he shall give the acknowledgment, but not the undertaking.

Inability of vendor to obtain acknowledgment from third parties who hold deeds an objection to title.

As regards documents not in the vendor's possession, and not being instruments of record, the purchaser should see whether they are the subject of any existing covenant for production or statutory acknowledgment, the benefit of which will pass to him on completion. If they are not, he is entitled to require the vendor to procure such a covenant or acknowledgment from the person who

(*a*) Young and Harston's Contract, 31 C. D. 169.
(*b*) Parr *v.* Lovegrove, 4 Drew. 182, n.
(*c*) Vendor and Purchaser Act, 1874, s. 2, rule 5.
(*d*) Dart, 763.
(*e*) Conveyancing Act, s. 9.

Unless purchaser has right in equity to production.

holds them. If the vendor cannot do so, his inability will be an objection to the title, unless the circumstances are such that the purchaser will on completion have a right in equity to their production (*f*).

Practice when property sold in lots.

If property held under one title is sold in lots, the practice, in the absence of special stipulation, is for the purchaser of the larger portion in value to have their custody.

Purchaser must pay for attested copies.

A purchaser is entitled to have (but at his own expense(*g*)) attested copies of documents not delivered to him, and office copies of such as are instruments of record.

As to other matters.

As to retracting a bidding.

It is usual to provide on a sale by auction that no person shall retract his bidding; but Lord St. Leonards, though he originally suggested the condition, doubts whether it could be enforced (*h*).

When vendor may employ a bidder.

If it be announced either by the particulars or publicly at the time of sale that the sale is to be without reserve, the sale of course is vitiated by a person being employed by the vendor to bid(*i*); but formerly, if a sale had been advertised generally without any statement as to its being without reserve, it was generally supposed that a vendor might, in equity though not at law, employ one person to bid, in order to prevent the estate being sold at an undervalue (*j*). But by the 30 & 31 Vict. c. 48, it is enacted that whenever a sale by auction of land would be invalid

In what cases equitable right to production exists.

(*f*) Vendor and Purchaser Act, 1874, s. 2, r. 3. It is difficult to say in what cases there is an equitable right to the production of deeds. In Barclay *v.* Raine, 1 Sim. & Stu. 449, it was contended that where A. is in possession of deeds relating to his own lands as well as to lands of B., B. although he has no covenant for production has a general right in equity to require A. to produce them, but this equity was treated by the Court as doubtful. But in Fain *v.* Ayres, 2 Sim. & S. 533, where on a sale and conveyance of land the vendor had given no covenant for production, the Court was strongly inclined to think that the purchaser had an equity to require the production.

(*g*) Conveyancing Act, 1881, s. 3, sub-s. 6.

(*h*) Sug. 11.

(*i*) Thornett *v.* Haines, 15 M. & W. 372; 15 L. J. Ex. 230; Meadows *v.* Tanner, 5 Mad. 34.

(*j*) Bramley *v.* Alt, 3 Ves. 620; Conolly *v.* Parsons, *ib.* 625, n.; Smith *v.* Clarke, 12 Ves. 477; Twining *v.* Morrice, 2 Bro. C. C. 326; Woodward *v.* Miller, 2 Coll. C. C. 279. But see the observations of Lord Cranworth in Mortimer *v.* Bell, L. R. 1 C. A. 10.

at law by the employment of a puffer, the same shall be so in equity also (*k*); and it is further provided that the particulars or conditions of sale by auction of land shall state whether it will be sold without reserve or subject to a reserved price, or whether a right to bid is reserved, and that if the land is stated to be sold without reserve or to that effect it shall not be lawful for the seller to employ any person to bid, or for the auctioneer to take knowingly any bidding from such person; and that when any such sale is declared to be subject to a right for the seller to bid, the seller, or any one person on his behalf, may bid at such auction in such manner as he may think proper (*l*). It has been decided that a statement that the sale is subject to a reserved price, does not enable the vendor to employ a bidder. The latter right must be expressly reserved also (*m*). 30 & 31 Vict. c. 48.

Deposit.

It is usual on sales by auction to provide that the purchaser shall pay a deposit, which is intended as a guarantee for the performance of the contract, and also as part payment of the purchase-money, if it is completed. If the deposit is paid to the auctioneer, which is the usual practice in London, he is a stakeholder, and must retain it until completion, and he is not chargeable with interest on it, although he may have actually made a profit by its investment (*n*). In country sales the deposit is generally paid to the vendor's solicitor, who receives it not as a stakeholder, but as the vendor's agent, and is bound to hand it over to the vendor at once (*o*). Where the deposit is large, it may be prudent to provide for its investment during the interval between the sale and the completion of the purchase, and in that event the vendor will be entitled to any increase, and must bear any loss, in the value of the investment (*p*).

Auctioneer a stakeholder.

Vendor's solicitor not a stakeholder.

Investment of deposit.

(*k*) Sect. 4.
(*l*) Sects. 5, 6.
(*m*) Gilliatt *v.* Gilliatt, L. R. 9 Eq. 60.
(*n*) Harington *v.* Hoggart, 1 B. & Ad. 577.
(*o*) Edgell *v.* Day, L. R. 1 C. P. 80.
(*p*) Burroughes *v.* Brown, 9 Hare, 609. See also St. Paul *v.* Birmingham, &c. Railway Company, 11 Hare, 305.

As to deposit when sale by tenant for life.

Where the sale is by a tenant for life under the Settled Land Acts, so that the purchase-money will be payable to the trustees of the settlement, it will be proper to arrange with the trustees as to who shall be entrusted to receive the deposit, and what is to be done with it until completion.

Forfeiture of deposit.

If the purchaser fails to perform the contract, by reason of his bankruptcy or otherwise, he forfeits the deposit (*q*). But it is usual to stipulate not only for the forfeiture of the deposit, but also that the vendor may resell and recover from the purchaser any deficiency in price on the second sale, together with the costs. Under this condition, the vendor is entitled to retain the whole of the deposit, whether he resells or not; and if he resells at a loss, he can recover so much of the deficiency and costs as is not covered by the deposit (*r*). The vendor's right is the same if the condition provides for a resale and recovery of the deficiency as above, but says nothing about the deposit (*s*).

As to apportionment of rent on sale in lots.

When a property which is subject to a lease at an entire rent is sold in lots, or a part only of such property is sold, provision must be made by the conditions for the apportionment of the rent, and, if the tenant's concurrence in the apportionment cannot be obtained, the purchaser should be precluded from taking any objection on that account.

Verbal statements not admissible to vary or explain written contract.

But where there is an ambiguity and either party has been deceived, this is a good defence to an action for specific performance.

Verbal statements of the auctioneer at the time of the sale cannot be admitted in evidence to vary or explain the particulars or conditions (*t*). But if the particulars or conditions are ambiguous in a material point, so that the parties may not unreasonably have understood them in different senses, and it appears by parol or other evidence that they have in fact done so, the Court will refuse to enforce specific performance at the suit of either party against the other, a mistake under such circumstances being a valid defence in

(*q*) *Ex parte* Barrett, L. R. 10 Ch. 512.

(*r*) Ockenden *v.* Henly, 27 L. J. Q. B. 361; Soper *v.* Arnold, 37 C. D. 96; Kingdon *v.* Kirk, 37 C. D. 141.

(*s*) Howe *v.* Smith, 27 C. D. 89; Soper *v.* Arnold, 14 App. Ca. 429.

(*t*) Clowes *v.* Higginson, 15 Ves. 516.

equity (*u*). But if the particulars are plain a purchaser cannot resist specific performance on the ground that he has misunderstood them, such misunderstanding being due only to his own carelessness (*x*).

Trustees ought not to sell subject to unnecessary or improperly depreciatory conditions, and sales have been frequently set aside on this ground (*y*). The law on this subject is now regulated by the Trustee Act, 1888, s. 3 (*z*).

III. *The legal remedies for obtaining performance of a contract, or relief for a breach of contract.*

Vendor or purchaser can obtain opinion of Judge in Chambers.

A vendor or purchaser of real or leasehold estate, or their representatives respectively, may at any time apply in a summary way to a Judge in Chambers, in respect of any requisitions or objections, or claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the validity of the contract), and obtain the decision of the judge thereon, and also as to the costs of the application (*a*).

What questions can be so decided.

Under this section the judge has power to determine the validity of a notice to rescind the contract for sale (*b*), or, on declaring that a good title cannot be made, to decide that the deposit is to be repaid with interest, and that the vendor shall pay the costs of investigating the title, or that any other things shall be done which are the natural consequence of the decision (*c*); but he has no jurisdiction under this

(*u*) Clowes *v.* Higginson, *ubi supra;* Manser *v.* Back, 6 Hare, 443; Torrance *v.* Bolton, L. R. 8 Ch. 118.

(*x*) Tamplin *v.* James, 15 C. D. 215.

(*y*) A condition enabling the vendors to rescind in case objections are made which they are unable to remove, or that the title shall commence with a deed of very recent date, in order to save expense, have been held to be not depreciatory. Hobson *v.* Bell, 2 Beav. 17; Dunn *v.* Flood, 25 C. D. 600.

(*z*) See Dissertation on "Trustees" in vol. 2.

(*a*) Vendor and Purchaser Act, 1874, s. 9. See *In re* Burroughs, 5 C. D. 601.

(*b*) *In re* Jackson and Woodburn's Contract, 37 C. D. 44.

(*c*) *In re* Yielding and Westbrook, 31 C. D. 344; *In re* Hargreaves and Thompson's Contract, 32 C. D. 454; *In re* Higgins and Hutchins' Contract, 21 C. D. 95.

section to decide any point that does not concern the purchaser (*d*).

It has been held in a recent case that if a purchaser claims a return of his deposit on the ground of a misdescription, the question raised affects the validity of the contract, and cannot be decided on a vendor and purchaser's summons (*e*).

Doubtful title.

It was formerly the practice of the Court not to oblige a purchaser to take a title which might be considered doubtful, and in one case it was laid down that the opinion of the judge in its favour must be so clear, that it does not apprehend that another judge would form a different opinion (*f*). But this doctrine has been qualified by recent cases. In *Alexander* v. *Mills* (*g*), James, L. J., observed: "We do not say that there may not be cases, in which a question of law may be considered so doubtful, that a Court would not, on its own view, compel a purchaser to take a title: still, as a general and almost universal rule, the Court is bound as much between vendor and purchaser as in every other case to ascertain and determine what the law is, and to take that to be the law which it has so ascertained and determined. The exceptions to this will probably be found to consist, not in pure questions of legal principle, but in cases where the difficulty and the doubt arise in ascertaining the true construction and legal operation of some ill-expressed and inartificial instrument." The present rule seems to be this, that where the doubt involves some general principle of law, it is the duty of the Court to remove it by deciding the point; but if it is one as to the proper construction of some ill-expressed instrument, on which opinions might well differ, the Court will not as a general rule decide it in the absence of interested persons, and will not force the purchaser to accept the title (*h*). A Court of appeal, whose opinion

(*d*) *In re* Tippetts and Newbold's Contract, 37 C. D. 444.

(*e*) *In re* Davis and Cavey, 40 C. D. 601.

(*f*) Pyrke *v.* Waddingham, 10 Hare, 1; Rogers *v.* Waterhouse, 4 Drew. 329; Mullings *v.* Trinder, L. R. 10 Eq. 449.

(*g*) L. R. 6 Ch. 131.

(*h*) Palmer *v.* Locke, 18 C. D. 381; Collier *v.* McBean, 1 Ch. 81.

is in favour of a title, will not treat it as doubtful, merely because the inferior Court has taken a different view and decided against it (*i*).

Action for specific performance.

Where the question between the parties is one which affects the validity of the contract, or for any other reason cannot be decided on a vendor and purchaser's summons, the remedy of the party aggrieved is by an action for specific performance or by an action claiming damages for the breach.

Measure of damages on breach of contract for sale.

The general rule of law that where a person makes a contract and breaks it, he must pay the whole damage sustained in consequence, does not apply to contracts for the sale of real estate, in respect of which a special rule has been established by the case of *Flureau* v. *Thornhill* (*k*), viz., that on a breach of a contract of this nature arising from want of title, the purchaser can only recover by way of damages the expenses of investigating the title, and is not entitled to compensation for the loss of the bargain (*l*).

Special clauses generally inserted in contracts to protect vendor against liability if unable to make title.

As has been already stated, it is usual for the vendor to protect himself against liability to pay interest or costs in case of his not being able to make a title, by a special condition enabling him to rescind in that event.

It has also been stated that, on a sale by auction, a vendor usually reserves to himself a power to resell the property in case of the purchaser's default, and to charge the latter with the deficiency in price, if any.

IV. *Other incidents and consequences of a contract for sale.*

Purchaser becomes owner from date of contract.

From the date of a valid contract for sale the purchaser becomes in equity the owner of the land, and

(*i*) Shepherd *v.* Doolun, 3 D. & War. 1; Beioley *v.* Carter, L. R. 4 Ch. 230; Alexander *v.* Mills, *ubi supra;* Bell *v.* Holtby, 15 Eq. 178, 193.

(*k*) 2 Bl. Rep. 1078; Walker *v.* Moore, 10 B. & C. 416. See Engell *v.* Fitch, L. R. 4 Q. B. 659; Pounsett *v.* Fuller, 17 C. B. 660; Sikes *v.* Wild, 30 L. J. Q. B. 325; Robinson *v.* Harman, 1 Exch. 850.

(*l*) The rule laid down in Flureau *v.* Thornhill was fully considered and confirmed by the House of Lords in Bain *v.* Fothergill, L. R. 7 H. L. 158, and an exception attempted to be engrafted on it by Hopkins *v.* Grazebrook, 6 B. & C. 31, disapproved. See Burrow *v.* Scammell, 19 C. D. 175; Rowe *v.* School Board of London, 36 C. D. 619; Royal Bristol Permanent Building Society *v.* Bomash, 35 C. D. 390.

the vendor becomes entitled to the money or other consideration to be paid for the purchase, subject, however, to the obligation of the vendor to show that he has a title.

Loss happening after contract falls on purchaser, and benefit accruing after contract belongs to him.

It follows, that any loss or deterioration arising to the property after the contract and before the conveyance, falls upon the purchaser. Thus, where houses contracted to be sold were afterwards burnt down, the contract was enforced against the purchaser, although the vendor had since the contract allowed the insurance to expire without giving him notice (*m*); and for the same reason, on the purchase of a life annuity, the purchaser must bear any loss arising from the death of the *cestui que vie* before the conveyance (*n*). On the other hand the purchaser is entitled to any benefit which may accrue to the estate from circumstances happening between the contract and conveyance, as by the dropping of lives on the purchase of a reversionary interest, or by an increase or improvement in the value of the land (*o*); and where he purchases in consideration of a life annuity to be paid to the vendor, the contract will be enforced against the latter, although the annuity drops by the death of the *cestui que vie* before the conveyance (*p*). In these cases, however, it is material that the vendor and purchaser have respectively performed their portion of the contract up to the time of the event happening (*q*).

Who entitled to insurance moneys in case of fire between contract and completion.

It is to be observed that a contract for the sale of a house does not pass to the purchaser the right to a sum paid to the vendor on account of damage by fire occurring between the date of the contract and the completion of the purchase under an insurance effected before the contract (*r*).

(*m*) Paine *v.* Miller, 6 Ves. 349. See also Poole *v.* Shergold, 2 Bro. C. C. 118.

(*n*) Kenney *v.* Wexham, 6 Mad. 355.

(*o*) Harford *v.* Purrier, 1 Mad. 539.

(*p*) Mortimer *v.* Capper, 1 Bro. C. C. 156; Jackson *v.* Lever, 3 Bro. C. C. 60.

(*q*) Counter *v.* McPherson, 5 Moore, 83.

(*r*) Rayner *v.* Preston, 18 C. D. 1. But if the insurance money is paid to the vendor, he will be bound to repay it to the insurance company out of the purchase-money, if the latter is paid to him in full. Castellain *v.* Preston, 11 Q. B. D. 380.

A binding contract for sale is not avoided by the death of either party before completion, and on the death of the vendor his personal representatives are entitled to the purchase-money (*s*), and have power to convey the land to the purchaser (*t*). On the death of the purchaser, his heir or devisee is entitled to have the estate conveyed to him, and in either case the estate itself will be the primary fund for the payment of the unpaid purchase-money (*u*). A binding contract is a conversion in equity.

A general devise contained in a will made since the Wills Act, passes land contracted to be purchased after the date of the will; and a contract for the sale of land in equity revokes a previous devise made by the vendor (*x*); and it seems clear that the purchase-money will pass under his will as part of his personal estate (*y*). Effect of contract on devise.

The Bankruptcy Act, 1883 (*z*), enables the trustee, when any part of the bankrupt's property consists of unprofitable contracts, to disclaim, but the Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment of damages or otherwise as the Court may deem equitable. Effect of bankruptcy.

STAMPS ON CONTRACTS FOR SALE.

Under the Stamp Act, 1891 (*a*), an agreement or any memorandum of an agreement made in England or Ireland, under hand only, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument, is liable to a fixed duty of 6*d*., subject to certain exemptions of which it is Fixed duty on agreements,

(*s*) Broome *v.* Monck, 10 Ves. 597; Garnett *v.* Acton, 28 Beav. 333; Hudson *v.* Cook, L. R. 13 Eq. 417.

(*t*) Conveyancing Act, s. 4.

(*u*) See Dissertation on Mortgages, *infra*.

(*x*) Farrar *v.* Earl Winterton, 5 Beav. 1; *In re* London Bridge Approaches Act, 13 Sim. 569.

(*y*) 1 Jar. on Wills, 148; Knollys *v.* Shepherd, 1 J. & W. 499; Dart, 205.

(*z*) 46 & 47 Vict. c. 52, s. 55.

(*a*) 54 & 55 Vict. c. 39, schedule.

only necessary here to mention the following, namely, an agreement or memorandum the matter whereof is not of the value of £5, and an agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.

including agreements of sale, subject, however, to sect. 59.

An agreement for the sale of land or other property comes within the above definition, subject to the following special provisions contained in sect. 59: namely,

Contracts for the sale of an equitable interest in land, or for sale of any interest in other property, to be charged with *ad valorem* duty.

(1.) Any contract or agreement made in England or Ireland under seal, or under hand only, or made in Scotland, with or without any clause of registration, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments, or heritages, or property locally situate out of the United Kingdom, or goods, wares, or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest, or property contracted or agreed to be sold.

Sub-contracts have to be stamped.

(2.) Where the purchaser has paid the said *ad valorem* duty, and, before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case, with the fixed duty of 10*s.* (*a*) or of 6*d.*, as the case may require.

When *ad valorem* duty has been paid on contract, conveyance to be free from duty.

(3.) Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioners, upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements duly stamped.

For certain purposes, fixed duty on contracts sufficient.

(4.) Provided that where any such contract or agreement is stamped with the fixed duty of 10*s.* (*a*) or of 6*d.*, as the case may

(*a*) The duty of 10*s.* applies to a contract under seal.

require, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance, or recover damages for the breach thereof.

Fixed duty on contract sufficient if conveyance is duly stamped with *ad valorem* duty within six months, which time may be extended.

(5.) Provided also, that where any such contract or agreement is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners for stamping with the *ad valorem* duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Commissioners may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same and the said contract or agreement shall be deemed to be duly stamped. Nothing in this proviso shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

Ad valorem duty on a contract to be returned if not carried out.

(6.) Provided also, that the *ad valorem* duty paid upon any such contract or agreement shall be returned by the Commissioners in case the contract or agreement be afterwards rescinded, annulled, or for any other reason be not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.

Practice as to stamping agreements within sect. 59.

Having regard to sect. 59, and in particular to sub-sect. (5), the usual practice as to stamping agreements for sale which come within that section, and which are intended to be carried into effect by a subsequent conveyance or transfer, is to stamp the agreement as heretofore with the fixed duty of 6*d*. Care must be taken to get the conveyance or transfer executed within six months after the date of the agreement, if possible; and if this cannot be done, the solicitor for the petitioner must be prepared to satisfy the Commissioners that there has been no unreasonable delay in completion.

Adhesive agreement stamp.

The duty of 6*d*. upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person who first executes it (*b*).

Stamp on purchase of several lots at auction.

A purchaser of several lots at an auction is considered to have entered into an equal number of agreements for the purchase of the same lots, so that the agreement must bear as many stamps as there are lots, assuming that the purchase-money for each lot

(*b*) Sect. 22.

amounts to £5 (*c*). But the value of the lots must be taken separately, so that if the purchase-money for no single lot amounts to £5, the agreement would not be chargeable with any stamp.

If the agreement consists of several letters, it is sufficient to stamp one (*d*).

An agreement for sale may, like other instruments, be stamped after execution on payment of a penalty (*e*).

(*c*) James *v.* Shore, 1 Stark. N. P. C. 426; Watling *v.* Horwood, 12 Jur. 48.

(*d*) Stead *v.* Liddard, 1 Bing. 196.

(*e*) See p. 208, *infra*.

CONDITIONS OF SALE (*f*).

No. I.

CONDITIONS *of* SALE *of* FREEHOLD *or* COPYHOLD PROPERTY *in* ONE LOT.

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

As to biddings.

1. THE property is sold subject to a reserved price, and the vendor reserves the right to bid. So subject, the highest bidder shall be the purchaser, and if any dispute shall arise between two or more bidders the property shall be put up again at the last undisputed bidding. No person shall advance at each bidding less than £—— [*or* the sum which shall be fixed by the auctioneer at the time of the sale], and no bidding shall be retracted.

Deposit.

2. THE purchaser shall immediately after the sale pay to the auctioneer [*or* to Mr. ——, the vendor's solicitor,] a deposit of £—— per cent. upon the amount of his purchase-money, and sign an agreement to complete the purchase according to these conditions.

Timber to be paid for at a valuation.

[2A. IN addition to the amount of his bidding at the sale, the purchaser shall pay for all timber and timber-like trees, tellers, pollards, and saplings on the property, down to the value of one shilling per stick inclusive, at a valuation to be made in manner following, (that is to say) :—Each party shall appoint a valuer, and give notice thereof by writing to the other party within fourteen days from the day of the sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers or (if they disagree) their umpire shall make the valuation. If either party shall neglect to appoint a valuer or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone (*g*). In the following

(*f*) The preceding dissertation on "contracts for sale" applies equally to sales by public auction and sales by private contract. But it is thought convenient in the precedents to place "conditions of sale" and "agreements for sale" under separate headings.

(*g*) Sometimes the timber is valued before the sale, in which case the amount of the valuation is stated in the particulars, and the condition will then be as follows :—

In addition to the amount of his bidding at the sale, the purchaser shall pay for the timber and other trees on the property the amount stated in the particulars.

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

As to the completion of the purchase.

3. THE remainder of the purchase-money shall be paid and the purchase shall be completed on the —— day of —— next at the office of Mr. —— (the vendor's solicitor); and if from any cause whatever the purchase shall not be completed on that day, the purchaser shall pay to the vendor interest after the rate of £5 [*or* £4] per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser shall be entitled to the possession [*or* the receipt of the rent and profits] of the property from the said —— day of —— next, all outgoings up to that day being cleared by the vendor. All current rents and outgoings shall be apportioned for the purposes of this condition, and any money payable by or to the purchaser on such apportionment shall be paid with or deducted from the purchase-money at the time of completion.

Commencement of title.

4. THE title shall commence with an indenture, dated, &c., being a conveyance on a sale [*or* a mortgage, *or* a voluntary settlement, *or as the case may be*] (*f*).

(*Insert here any special conditions which the state of the title may require. See forms of special conditions*, pp. 62—75, *infra*.)

Identity.

5. THE purchaser shall not require any evidence of the identity of the property as described in the particulars with the property described in the abstracted documents, other than such as is afforded by a comparison of the descriptions in the particulars and documents respectively, and a statutory declaration, which will be furnished to him if he requires it, at his own expense, that the property has been held consistently with the title shown by the abstract during the last twenty years.

Tenancies and easements.

6. THE property is sold subject to existing tenancies, and to all easements (*g*) (if any) affecting the same.

7. THE description of the property in the particulars is believed and shall be deemed to be correct, and no objection shall be made or compensation claimed on account of an error of description as to quantity [*or* measurements], or otherwise, should any such be found (*h*).

(*f*) See p. 13, *supra*.

(*g*) The above condition will not exempt the vendor from the obligation of disclosing any easements of which he is aware. See p. 21, *supra*.

Condition only applies

(*h*) This condition applies only to physical or patent errors of description, nor would it entitle the vendor to insist on specific performance,

(*Or the following.*)

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

7A. THE quantities of the several lands [*or* the measurements of the property] are believed and shall be deemed to be correctly stated in the particulars, and no objection shall be made or compensation claimed on account of a slight (*i*) error in quantity should any such be found. If any other error or omission in the particulars shall be discovered before the completion of the purchase, such as in the absence of this condition would entitle either party to relief, compensation shall be allowed in respect thereof to or by the purchaser, as the case may require, the amount to be settled in case of difference by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference. But this condition is without prejudice to the right of the vendor to rescind under the next condition.

Errors of description.

8. ALL objections and requisitions in respect of the title, or the abstract, or particulars, or anything appearing therein (*k*), shall be stated in writing and sent to the vendor's solicitor within —— days from the receipt of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived; and for the purpose of any objection or requisition the abstract shall be deemed perfect if it supplies the information suggesting the same, although otherwise defective. If any objection or requisition shall be made and insisted on which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation on the subject of such objection or requisition or attempts to remove or comply with the same), by notice in writing to the purchaser, to rescind the sale; in which case the purchaser shall receive back the deposit without interest or costs, and shall return to the vendor the abstract of title and any other papers in his possession belonging to the vendor. But the purchaser may, within seven days after receiving the notice to

Time for making requisitions,

and power to rescind in certain cases.

without compensation, in the case of a serious misdescription by which the purchaser is misled. See p. 30, *supra*.

to physical or patent errors.

(*i*) The word "slight" is purposely added (1) because as against the purchaser it expresses what would otherwise be implied, and (2) because the condition without this word might be used against the vendor should it happen that by some inadvertence the quantity were materially understated, as was the case in Leslie *v.* Thompson, 9 Ha. 268.

(*k*) These words include a claim to compensation for a misdescription. See Terry and White's Contract, 32 C. D. 14.

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

Vendor to make assurances.

9. Upon payment of the residue of the purchase-money at the time and place aforesaid, the vendor (*l*) will make and execute to the purchaser a proper assurance of the property (*m*), such assurance to be prepared by and at the expense of the purchaser, and to be left by him for execution at the office aforesaid, not less than seven days before the said —— day of ——; [and the getting in of all outstanding estates, terms, and interests (if any) shall be at the expense of the purchaser (*n*)].

Purchaser to have benefit of fire insurance.

[10. (*To be inserted where the property is insured against fire.*) The purchaser shall be entitled as from the day of sale to the benefit of the existing insurance of the property against loss or damage by fire, and the vendor shall be deemed a trustee of such insurance for the purchaser accordingly. The vendor shall be under no obligation to renew the insurance at the end of the current year; but if he does so, the purchaser shall on completion repay to him the premium paid for such renewal (*o*)].

Vendor's power to resell on purchaser's default.

11. If the purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale either by public auction or private contract, with or without notice to the purchaser at the present sale, and the deficiency, if any, occasioned by such second sale, together with all charges attending the same, shall immediately after such sale be made good by the defaulter at this present sale, and in case of non-payment, the whole shall be recoverable by the vendor as and for liquidated damages, and it shall not be necessary for the vendor to tender a conveyance.

Memorandum to be annexed to the Particulars and Conditions.

MEMORANDUM. At the Sale by auction, made this day, of the property described in the above particulars, A. B., of ——,

(*l*) Add, if it is the case, "who is a trustee for sale."

(*m*) Add, if the vendor is a trustee, "including the usual statutory acknowledgment in respect of all documents retained by him, but not any undertaking for their safe custody." If the vendor is not a trustee it is unnecessary to make any stipulation as to documents relating to other property, as the vendor is by law entitled to retain them, and must give an acknowledgment and undertaking.

(*n*) This will be inserted where the state of the title requires it.

(*o*) This will be inserted where the property is insured against fire.

was the highest bidder for, and was declared the purchaser of the said property, at the price of £——; and the said A. B. has paid to C. D., as agent for and on behalf of —— (*p*), the vendor, the sum of £—— by way of deposit, and in part payment of the purchase-money; and he hereby agrees to complete the purchase, according to the above conditions, and the said C. D., as the vendor's agent, hereby confirms the said sale, and acknowledges the receipt of the said deposit. OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

C. D. (*auctioneer, or vendor's solicitor*) for the vendor.
A. B. (*purchaser*).

(*Sometimes property, which is not sold at the auction, is afterwards sold privately. In such a case a memorandum in the following words should be annexed to the particulars and signed by both parties.*)

MEMORANDUM. C. D., of, &c. (*vendor*), hereby agrees to sell, and A. B., of, &c. (*purchaser*), hereby agrees to purchase the property described in the above particulars for the sum of £——, of which the sum of £—— has been paid by the said A. B. to the said C. D. by way of deposit. And it is hereby agreed that this sale is made subject to the above conditions so far as the same are applicable to a sale by private contract.

(Signed) C. D.
A. B.

No. II.

CONDITIONS *of* Sale *of a* Leasehold House [*and* Tenant's *fixtures*] *in* One Lot [*the fixtures to be taken at a valuation*]; *with* variations *where the property is held by* Underlease, *and where the* Vendor *is a* Mortgagee *by* Subdemise. OF LEASEHOLDS IN ONE LOT.

1, 2. (*As in Precedent No. I., supra*, p. 49.)

[2A. In addition to the amount of his bidding at the sale the purchaser shall pay for the tenant's fixtures in and about the Tenant's fixtures.

(*p*) The name of the vendor should be inserted in the contract before it is signed.

OF LEASEHOLDS IN ONE LOT.

premises at a valuation to be made in manner following (that is to say): the vendor shall appoint one valuer and the purchaser shall appoint another valuer, and each party shall make such appointment by writing and give notice thereof to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or (if they disagree) their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party, for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

As to completion of the purchase.

3. (*As in Precedent No. I.*, p. 50.)

Commencement of title.

4. THE title shall commence with the lease [*or* underlease] dated the —— day of ——, 18—, mentioned in the particulars, which lease [*or* underlease], or a copy thereof (*q*), will be produced at the time of sale, and may be inspected the day before the sale at the office of the vendor's solicitor, and the purchaser shall be deemed to have notice of all its contents. The production of the receipt for the last payment of rent which shall have become due under the said lease [*or* underlease] shall be deemed conclusive evidence that all the covenants and conditions therein [and in the superior lease] have been observed and performed up to the day of completion, or that all breaches (if any) of such covenants and conditions have been waived, and no evidence shall be required that such receipt is under the hand of the person properly qualified to give the same. [*Add if the property is held by underlease and the superior lease cannot be produced,* The purchaser shall not require the production of the superior lease or any copy thereof.]

If the vendor is a mortgagee by subdemise, the following addition will be made to No. 4:—

That vendor is a mortgagee by sub-demise.

The property is vested in the vendor as mortgagee by sub-demise for the residue of the term granted by the said lease, except the last day thereof, and the mortgage deed contains a declaration that, after a sale under the statutory power of sale,

(*q*) If the property is held by underlease and the superior lease can be produced, add, "and also the superior lease."

the mortgagor shall hold the premises for the last day of the term in trust for the purchaser. The vendor is selling as mortgagee under the said power, and the purchaser shall make no objection on the ground that the legal estate for the last day of the term is outstanding in the mortgagor, and shall not require the same to be got in. OF LEASEHOLDS IN ONE LOT.

(*Insert any special conditions which the state of the title may require.*)

5. ALL objections, &c. (*as in Precedent No. I., condition No.* 8, p. 51).

6. UPON payment of the residue of the purchase-money at the time and place aforesaid, the vendor will execute to the purchaser a proper assignment of the property [*add, if the vendor is a trustee or mortgagee, and any documents are retained by him,* including the usual statutory acknowledgment in respect of documents retained by him, but not any undertaking for their safe custody], such assignment to be prepared by and at the expense of the purchaser, and to be left by him for execution at the office aforesaid not less than seven days before the said —— day of ——. Vendor to assign property to purchaser.

7. IF the purchaser shall make default, &c. (*power to vendor to rescind on purchaser's default—See No.* 11 *in Precedent No. I.*, p. 52).

MEMORANDUM, &c. (*Precedent No. I.*, p. 52).

No. III.

CONDITIONS *of* SALE *of* FREEHOLD *or* COPYHOLD PROPERTY *in* LOTS.

OF PROPERTY IN LOTS.

1. THE property is sold subject to a reserved price for each lot, and the vendor reserves the right to bid. So subject, the highest bidder shall be the purchaser; and if any dispute shall arise between two or more bidders, the lot in dispute Highest bidder to be purchaser, and as to advance on biddings.

OF PROPERTY IN LOTS.

shall be put up again at the last undisputed bidding. No person shall advance at each bidding less than £—— [*or*, the sum to be fixed by the auctioneer at the time of sale], and no bidding shall be retracted.

Deposit.

2. EVERY purchaser shall, immediately after the sale, pay to the auctioneer [*or*, to Mr. ——, the vendor's solicitor], a deposit of £—— per cent. on the amount of his purchase-money, and sign an agreement to complete his purchase, according to these conditions.

Timber to be paid for at a valuation.

[2A. IN addition to the amount of his bidding at the sale, the purchaser of each lot shall pay for all timber and timber-like trees, pollards, and saplings on such lot, down to the value of 1*s.* per stick inclusive, at a valuation to be made in manner following (that is to say): each party shall appoint a valuer, and give notice thereof by writing to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or (if they disagree) their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party, for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

As to the completion of the purchase.

3. THE remainder of the purchase-money of each lot shall be paid, and the purchase thereof shall be completed, on the —— day of —— next, at the office of Mr. ——, the vendor's solicitor; and if from any cause whatever the purchase of any lot shall not be completed on that day, the purchaser thereof shall pay to the vendor interest after the rate of £5 [*or* £4] per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser of each lot shall be entitled to the possession or the receipt of the rents and profits of the lot purchased by him from the said —— day of —— next, all outgoings up to that day being cleared by the vendor. All current rents and outgoings shall be apportioned for the purpose of this condition, and any money payable by or to the purchaser on such apportionment shall be paid with or deducted from the purchase-money at the time of completion.

OF PROPERTY IN LOTS.

4. The title shall commence, as to lot 1, with, &c.; as to lot 2, with, &c. (*and so on as to all the lots*) (*r*).

Commencement of title.

(*Insert here any special conditions which the state of the title may require. For forms of special conditions, see* pp. 62—75.)

Identity.

5. No purchaser shall require any other evidence of the identity of the lot purchased by him with any of the property described in the abstracted documents than such as is afforded by a comparison of the descriptions in those documents and in the particulars, and a statutory declaration, which will be furnished to him if he requires it at his own expense, that the property has been held consistently with the title shown by the abstract for the last twenty years.

Easements, and apportionment of rent.

6. The several lots are sold subject to the existing tenancies, and all easements, quit rents, and other incidents of tenure (if any) affecting the same. And where two or more lots are included in one tenancy, the rent shall be apportioned between them as specified in the particulars, and the tenant shall not be required to concur in or consent to such apportionment.

Errors in particulars.

7. The description of the several lots in the particulars is believed and shall be deemed to be correct, and no objection shall be made or compensation claimed for an error of description as to quantity or otherwise should any such be found (*s*).

(*Or the following.*)

7A. The quantities of the several lands forming [*or* the measurements of] the several lots are believed and shall be deemed

(*r*) On a sale in lots, a purchaser of two or more lots held wholly or partially under the same title is entitled to one abstract only of the common title, except at his own expense. (Conv. Act, 1881, s. 3 (7).) When some of the lots are of small value, the following condition will be found useful:—

The vendors will deliver to every purchaser whose purchase-money (exclusive of the value of the timber) shall amount to £—— or upwards, or to his solicitor, an abstract of title to the lot or lots purchased by him. No purchaser whose purchase-money (exclusive as aforesaid) shall be less than £—— shall be entitled to an abstract at the vendor's expense, but he may have an abstract (if he desires) at his own expense, and may inspect at the office of the vendor's solicitors a general abstract of title comprising the lot or lots purchased by him. The title to the several lots shall commence, &c.

(*s*) See *supra*, p. 50, note (*h*).

OF PROPERTY IN LOTS.

to be correctly stated in the particulars, and no objection shall be made or compensation claimed for a slight error of quantity (*t*) if any such be found. If any other error or omission in the particulars shall be discovered before the completion of the purchase, such as, in the absence of this condition, would entitle either party to relief, compensation shall be allowed in respect thereof to or by the purchaser as the case may require; the amount to be settled, in case of difference, by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference. But this condition shall not prejudice the right of the vendor to rescind under the next condition.

Time for making requisitions,

8. All objections and requisitions in respect of the title or the abstract, or the particulars or anything appearing therein, shall be stated in writing, and sent to the vendor's solicitor within —— days from the receipt of the abstract; and all objections and requisitions not sent within that time shall be considered to be waived, and for the purpose of any objection or requisition the abstract shall be deemed perfect if it supplies the information suggesting the same, although otherwise defective.

and power to vendor to rescind in certain cases.

If any objection or requisition shall be made and insisted on which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation in respect thereof, or attempts to remove or comply with the same), by notice in writing to the purchaser by whom such objection or requisition shall be made, to rescind the sale: in which case the purchaser shall receive back the deposit without interest or costs, and shall return the abstract of title and any other papers in his possession belonging to the vendor, but the purchaser may, within seven days after receiving the notice to rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

Vendor to make assurances.

9. Upon payment of the residue of the purchase-money at the time and place aforesaid, the vendor (*u*) shall make and execute to the purchasers proper assurances of their respective lots, such assurances to be prepared by and at the expense of the purchasers, and to be left by them respectively for execution at

(*t*) See p. 51, note (*i*), *supra*.

(*u*) Add, if it is the case, "who is a trustee for sale."

the office aforesaid, not less than seven days before the said —— day of —— next, [and the getting in of all outstanding estates, terms, and interests (if any) shall be at the expense of any purchaser requiring the same]. OF PROPERTY IN LOTS.

10. Documents of title in the vendor's possession, relating to severals lots sold to different purchasers and to no other property of the vendor, will be delivered to the purchaser whose purchase-money is the largest, after the sales of all the lots have been completed, and will in the meantime be retained by the vendor. The vendor will, as to all documents retained by him, give to every purchaser of property to which the same relate the usual statutory acknowledgment and undertaking for safe custody in respect thereof; [*or, if the vendor is a trustee*, the usual statutory acknowledgment in respect thereof, but not any undertaking for their safe custody] (*x*). Custody of deeds.

[11. (*To be inserted when any of the lots comprises property insured against fire.*) Whenever any house or building on any lot is insured against loss or damage by fire, the purchaser shall be entitled to the benefit of the insurance as from the day of sale, and the vendor shall be deemed a trustee for him of such insurance accordingly. The vendor shall be under no obligation to renew any such insurance at the end of the current year; but if he does so, the purchaser shall on completion repay to him the premium paid for such renewal.] Insurance against fire.

12. If any purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale, either by public auction or private contract, with or without notice to the purchaser at the present sale, and the deficiency (if any) occasioned by such second sale, together with all charges attending the same, shall, immediately after such sale, be made good by the defaulter at this present sale; and, in case of nonpayment of the same, the whole shall be recoverable by the vendor, as and for Power of vendor to resell in case of default by purchaser.

(*x*) It will be observed that in the above condition there is no stipulation that the purchaser to whom deeds are delivered shall give an acknowledgment. It is considered that it is unnecessary. The vendor will give an acknowledgment, &c., to each purchaser as he completes, and the liability under it will be transferred to the purchaser to whom the deeds are ultimately delivered by virtue of sect. 9, sub-sect. 2, of the Act.

OF PROPERTY IN LOTS.

liquidated damages; and it shall not be necessary for the vendor to tender a conveyance.

Memorandum to be annexed to the Particulars and Conditions.

MEMORANDUM. At the Sale by auction, made this day, of the property comprised in the above particulars, A. B., of ——, was the highest bidder for, and was declared the purchaser of lot ——, at the price of £——, and the said A. B. has paid to C. D., as agent for and on behalf of —— (*y*), the vendor, the sum of —— by way of deposit, and in part payment of the purchase-money; and he hereby agrees to complete the purchase according to the above conditions: and the said C. D., as the vendor's agent, hereby confirms the said sale and acknowledges the receipt of the said deposit.

C. D. (*auctioneer, or vendor's solicitor*)
for the vendor.
A. B. (*purchaser*).

Memorandum to be signed by vendor and purchaser as to any lot which may not be sold at the auction but is afterwards bought privately.

MEMORANDUM. C. D., of, &c. (*vendor*), hereby agrees to sell, and A. B., of, &c. (*purchaser*), hereby agrees to purchase lot —— as described in the above particulars for the sum of £ ——, of which the sum of £ —— has been paid by the said A. B. to the said C. D. by way of deposit. And it is hereby agreed that this sale is made subject to the above conditions, so far as the same relate to the said lot, and are applicable to a sale by private contract.

(Signed) C. D.
A. B.

(*y*) The name of the vendor should be inserted in the contract before it is signed.

OF LEASEHOLDS IN LOTS.

No. IV.

CONDITIONS *of* SALE *of* LEASEHOLDS *held under* ONE LEASE *in* LOTS.

1, 2, 3. (*Same as in last Precedent.*)

4. (*Same as in Condition No.* 4, *in Precedent No. II., supra,* p. 54.)

5. ALL objections, &c. (*Same as No.* 8 *in last Precedent*).

On completion vendor to execute assignments, each assignment to contain covenant by purchaser to pay apportioned rent, &c.

6. UPON payment of the residue of the purchase-money at the time and place aforesaid, the vendor shall execute to the purchaser of each lot a proper assignment of that lot subject to the apportioned rent mentioned in the particulars as payable in respect thereof. Every assignment shall contain a covenant by the purchaser with the vendor to pay the apportioned rent, and to observe and perform the lessee's covenants contained in the lease so far as the same relate to the lot comprised in the assignment, and to keep indemnified the vendor and all persons deriving title under him, and in particular the purchasers at this sale of the other lots, from and against all claims and demands for or on account of the non-payment of the said apportioned rent, or the breach of the said covenants so far as aforesaid (*z*).

7. (*Power to re-sell on purchaser's default, supra,* p. 52.)

No. V.

SPECIAL CONDITIONS.

As to the mode of sale.

AS TO THE MODE OF SALE.

1. THE vendors reserve to themselves the liberty of offering the premises for sale either in one lot or in the several lots specified in the particulars, or of offering for sale any two or more of such lots together, and after having tried any of the aforesaid methods of sale of offering the premises for sale according to any other of the said methods as they shall think

(*z*) The above is recommended for general use where leaseholds held under one lease are sold in lots. The covenants of each purchaser being entered into with the vendor will be enforceable in equity by and against the several purchasers among themselves. For other forms of conditions in a similar case, see Special Conditions, Nos. 45, 46, p. 70.

AS TO THE MODE OF SALE.

proper, and in every case each bidder must abide by his bidding, and the highest bidder, according to the method ultimately adopted in any case, shall be the purchaser.

AS TO COMMENCEMENT AND EVIDENCE OF TITLE.

As to commencement and evidence of title.

2. The title shall commence with an indenture dated, &c., being a conveyance on a sale [*or* a mortgage in fee simple, *or* a settlement on marriage, *or* a re-settlement of family estates, *or* a disentailing assurance, *or* a voluntary settlement, *or whatever may be the nature of the deed*].

Title to commence with general devise.

3. The title to lot —— shall commence with a general devise contained in the will of ——, who died in the year ——, and the purchaser shall assume that the testator was, at the time of his death, seised in fee simple of the said lot, [such seisin being recited or stated in subsequent documents].

Title to commence with general devise, seisin of testator to be proved by declaration of possession.

4. The title to the property shall commence with a general devise contained in the will of ——, who died in the year 18—, and the purchaser shall assume the seisin in fee simple of the testator upon the faith of a statutory declaration, which will be furnished to him at his own expense, that the testator was in the possession or receipt of the rents and profits of the property at the time of and for some time previously to his death, and that the persons deriving title under his said will have been in such possession or receipt since his death and up to the present time.

Title to consist of will and appointments of new trustees containing general description only.

5. The vendors are the trustees of the will of ——, who died in the year ——. The title shall consist of the said will and of several appointments of new trustees thereof, in which appointments as well as in the said will the real estate of the testator is referred to by a general description, and there is no specific description of the property now offered for sale. A

Seisin to be evidenced by declaration.

statutory declaration will be furnished to the purchaser at his own expense that the property has been held consistently with the title derived under the will for the last 20 years and upwards, and such declaration shall be accepted by the purchaser as sufficient evidence that the testator was at his death seised in fee simple of the property.

With inclosure award.

6. The title to lot —— shall commence with the —— inclosure award, dated, &c., under which the same was allotted to

——, and the purchaser shall not be entitled to call for the title to the property, in respect of which such allotment was made, but shall assume that the allottee was seised in fee simple thereof. The validity and regularity of the award in all respects shall be presumed. AS TO COMMENCEMENT AND EVIDENCE OF TITLE.

7. The title to lot —— shall commence with the —— inclosure award dated —— under which the same was allotted to —— in exchange for other land, and the purchaser shall not be entitled to call for the title to the last-mentioned land, but shall assume that the allottee was seised in fee simple thereof. The validity and regularity of the said award in all respects shall be presumed. With exchange under inclosure award.

8. Lots —— and —— appear in a terrier and map annexed to the —— inclosure award dated ——, and are therein mentioned to be old enclosures belonging to ——. Such terrier and map shall be deemed sufficient evidence of the seisin in fee simple of the said ——; and no earlier title to the said lots shall be required. With statement in inclosure award.

9. Where any part of the property appears on the abstract to have been purchased from the Commissioners under an Inclosure Act, the purchaser shall presume that the provisions and directions of the Act in relation to the sale by the Commissioners, and payment of the purchase-money, and also in relation to the making of the said property tithe free, have been duly complied with. Presumption as to regularity of award.

10. The property was formerly copyhold and was enfranchised in the year 18— under the Copyhold Acts, and the same is sold subject to the rights of the lord of the manor to the minerals thereunder and such other rights as are reserved to him by the said Acts. The title shall commence with the admission, &c. As to enfranchised copyholds.

11. The property is held under a lease dated ——, and (after divers mesne assignments) was assigned to the vendor in the year 18—. The title shall consist of the original lease, and of the assignment to the vendor, and the purchaser shall not require the production of the mesne assignments, or any of them. Title to consist of lease and last assignment.

12. The title shall commence with an indenture of the —— day of ——, whereby the property was demised for 500 years by way of mortgage. The vendors have been in uninterrupted As to title to mortgage term by adverse possession.

AS TO COMMENCEMENT AND EVIDENCE OF TITLE.

possession of the property since the date of a certain indenture of the —— day of —— (whereby the property and the moneys thereupon secured were transferred to them), without having given any acknowledgment of the title of the mortgagor or his right of redemption, and under these circumstances it shall be assumed by the purchaser that the vendors are absolutely entitled to the premises for the residue of the said term of 500 years, absolutely discharged from all equity of redemption; and the purchaser shall not be entitled to require any other evidence of the above facts than a statutory declaration by the vendors.

Title to commence with lease and conveyance of reversion in fee.

13. THE title shall commence with an indenture of lease dated the —— day of ——, whereby A. B. demised the property to C. D. for 80 years, and the title to the reversion in fee expectant on the said lease shall commence with an indenture dated the —— day of ——, whereby E. F. conveyed such reversion in fee to G. H.; and it shall be assumed that the said A. B. had at the date of the first-mentioned indenture power to grant such lease, and that the said E. F. had at the date of the last-mentioned indenture power to dispose of the reversion in fee.

Where vendor has only possessory title.

14. THE vendor shall not be required to show any title to lot ——, or any evidence or explanation thereof, other than a statutory declaration from an old inhabitant in the parish in which the property is situate to the effect that the father of the vendor, who died intestate more than thirty years since, was in possession of the last-mentioned lot at the time of his decease, and also a counterpart of the lease under which the present tenant has held the said lot for more than twenty years of the present vendor.

As to tithe rent-charge.

15. THE title to the tithe rent-charge included in this sale shall commence with an indenture dated, &c., being a conveyance on a sale, and the purchaser shall not require the production, or any copy or abstract, of the original grant of the rectory and tithes by the Crown.

Title to advowson.

16. THE title to the advowson shall commence with an indenture dated ——; and as there have been three presentations since the date of the said indenture, the purchaser shall be satisfied with the title commencing as above, notwithstanding it does not cover three entire incumbencies.

AS TO COMMENCEMENT AND EVIDENCE OF TITLE.

Title to ground rents.

17. The title to the several ground rents shall commence with counterparts of the leases by which the same were respectively reserved as mentioned in the particulars, and the purchaser shall assume that the person or persons by whom such lease was granted was or were seised in fee simple of the property comprised therein at the date thereof.

Where property is sold subject to fee-farm rent.

18. The property is sold subject to a fee-farm rent of £5 created by an indenture dated ——, and to covenants and conditions contained in the same indenture as to buildings and otherwise, the nature of which covenants and conditions may be ascertained by an inspection of the said indenture, or a copy or abstract thereof, which will be produced at the sale. The receipt for the last payment of rent which shall have become due prior to the completion of the purchase shall be accepted by the purchaser as conclusive evidence of the performance of the covenants and conditions up to the completion of the purchase.

As to land acquired under agreement for exchange without a conveyance.

19. About an acre of ground, part of lot ——, was acquired by the vendor under an agreement for exchange made in the year —— with A. B., and has been in the possession of the vendor since that time, but no conveyance has been made to him for completing such exchange, and A. B. is now dead, leaving an infant heir, ——. The vendor shall not be required to procure a conveyance of the said land, or to furnish any title thereto, or to the land given by him in exchange for the same, other than the aforesaid agreement.

Declaration given to former vendor to be accepted.

20. The declaration with which the vendor on the occasion of his purchase was supplied in proof of the pedigree of ——, of the identity of the property, and of various other circumstances connected with the title, shall be accepted by the purchaser as conclusive evidence of the matters therein stated and declared.

Evidence as to satisfaction of a particular legacy.

21. As to lot ——, the purchaser shall assume the due payment and satisfaction of a legacy of £——, charged thereon by the will of a former owner, who died more than —— years ago, and which became payable on his death, but for which no receipt or release can be produced.

Evidence as to satisfaction of legacies generally.

22. The vendor shall not be required to produce the receipt for, or any other evidence of, the satisfaction of any pecuniary legacy bequeathed by the will of ——, who died more than twenty years since, and the payment of which respectively is

AS TO COMMENCEMENT AND EVIDENCE OF TITLE.

not thereby postponed, and at this distance of time it shall be assumed that every such legacy has been satisfied.

Evidence as to payment of charges.

23. THE purchaser shall not require evidence of the payment of any legacy or sum of money charged on the estate by any will or other document, and which became payable more than twenty years ago.

As to deed executed by attorney.

24. As to a certain indenture dated the —— day of ——, and which was executed by the attorney of the vendor on that occasion, it shall be assumed by the purchaser that the principal was then alive.

As to satisfaction of mortgage.

25. THE purchaser shall not be entitled to any other evidence of the satisfaction of a mortgage dated the —— day of —— than the fact that the mortgage deed is now in the possession of the vendor, and a statutory declaration by him to the effect that the mortgage deed has been in his possession during the last —— years, and that no claim has ever been made upon him for principal or interest under the same.

As to absence of indorsed receipt.

26. THE purchaser shall make no objection on the ground that no receipt for the consideration money is indorsed on a certain indenture dated ——, the receipt thereof being duly acknowledged in the body of the deed (*a*).

As to dower.

27. IT shall be assumed that every former owner of any part of the property whose widow (if any) would have been entitled to dower or free bench, and is not mentioned in the title, did not leave a widow.

Title to consist of conveyance to vendor.

28. THE title to the property being well known in the neighbourhood, no purchaser shall require any other evidence of such title than the conveyance of the lot or lots purchased by him to the present vendor.

Presumption of re-conveyance of legal estate.

29. THE re-conveyance or re-assignment of any legal estate by any trustee or mortgagee shall be presumed, where the period of —— years shall have elapsed from the last conveyance or assignment thereof, and where no mention shall be made in any of the subsequent deeds of such legal estate being outstanding.

Determination of leases to be assumed.

30. THERE being in a covenant against incumbrances contained in a deed dated —— an exception of two leases determinable on the lives of A. B. and C. D., no evidence shall be required of the determination of these leases, nothing being

(*a*) See Conveyancing Act, 1881, s. 54.

now known by the vendor concerning the same, or either of them.

AS TO COMMENCEMENT AND EVIDENCE OF TITLE.

As to recitals being evidence.

AS TO RECITALS BEING EVIDENCE.

31. ALL facts, matters, and things recited in any abstracted document dated —— years ago (*b*), shall be deemed to be conclusively proved thereby, and no further evidence thereof shall be required. And the purchaser shall not require the production or any abstract of any deed, will, or other document not in the vendor's possession, which is recited in any abstracted document dated —— years ago, but he shall assume that the recital is correct and gives all the material contents of the recited document, and that the recited document was duly executed.

Recitals of facts in any deed of a certain age to be evidence.

Recitals of documents not in vendor's possession to be sufficient.

As to title deeds, attested copies, &c.

AS TO TITLE DEEDS, ATTESTED COPIES, &C.

32. DOCUMENTS of title relating to other property of the vendor [*or* vendors] as well as to the property now offered for sale shall be retained by him [*or* them], and he [*or* they] will give to the purchaser the usual statutory acknowledgment and undertaking for safe custody in respect thereof, [*or when the vendor is a trustee*, the usual statutory acknowledgment in respect thereof, but not any undertaking for safe custody].

Deeds to be retained by vendor, who is to give statutory acknowledgment, &c. to purchaser.

33. DOCUMENTS of title which relate not only to the property now offered for sale, but also to other property of the vendor of less value, will be delivered to the purchaser, and he shall give to the vendor an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody, such acknowledgment and undertaking to be prepared by and at the expense of the vendor, but to be perused by the purchaser at his own expense.

Deeds to be delivered to purchaser, who is to give statutory acknowledgment, &c. to vendor.

34. DOCUMENTS of title in the vendor's possession relating to several lots sold to different purchasers, and to no other property of the vendor, will be retained by the vendor until the sales of all the lots have been completed, and he will give to the purchaser of every such lot, on completion, the usual statutory acknowledgment and undertaking for safe custody in respect thereof [*or if the vendor is a trustee*, the usual statutory acknow-

Deeds to be retained by vendor until completion of sale of all the lots, and he to give to purchasers statutory acknowledgment; on completion of all, deeds to

(*b*) This condition is not necessary unless the deeds containing the recitals are less than twenty years old.

AS TO TITLE DEEDS, ATTESTED COPIES, ETC.

ledgment in respect thereof, but not an undertaking for safe custody]. When the sales of all the lots to which the documents relate have been completed, the vendor will deliver them to the purchaser of the largest lot in value.

be delivered to largest purchaser in value.

Production of attested copy of any deed not in vendor's possession to be sufficient.

35. The purchaser shall not require the production, or make any objection on the ground of the non-production, of any document not in the vendor's possession of which the vendor shall produce an attested copy.

Plain copy of lost deed to be sufficient.

36. Inasmuch as a deed dated, &c., being a conveyance of lot —— to the vendor [*or*, being, &c., *describe the nature of the deed*], has been lost, the purchaser shall be satisfied with the production of a document purporting to be a plain copy thereof, and shall assume that the said deed was duly executed by all the parties thereto.

AS TO DESCRIPTION AND IDENTITY.

As to description of property and identity.

The description of property to be deemed correct.

37. All the lots are believed and shall be taken to be correctly described in the particulars, as to quantity and otherwise, and are sold subject to all chief or quit rents, rights of way and other easements (if any) affecting the same; and if any error, misstatement, or omission in the particulars be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendor or the purchaser in respect thereof.

As to evidence of identity.

38. No purchaser shall be entitled to require any further or other evidence of the identity of the lot or lots purchased by him with the property described in the abstracted documents than is afforded by a comparison of the descriptions in the particulars and in the abstracted documents respectively, and a statutory declaration (to be made and obtained at the expense of the purchaser requiring the same) that the purchased property has been held consistently with the title shown during the last twenty years.

Vendor not to be required to distinguish tenures.

39. The vendors shall not be required to identify or distinguish the copyhold parts of any lot from the freehold parts thereof, nor the copyhold parts held under one manor from those holden under any other manor; and in case any lot is held under more than one title, the vendors shall not be required to distinguish or point out the parts held under each title.

As to tithes (d) and land tax.

AS TO TITHES AND LAND-TAX.

Evidence of land being tithe free.

40. All the lots having been declared to be tithe free (e) by the —— inclosure award, the purchasers shall not require any other title to or proof of the exemption of the lots from tithe, than the production of the said award.

Another form.

41. The purchaser shall require no other evidence that the several lots are tithe free, than a statutory declaration by the vendor or his agent (to be made at the purchaser's expense) that no tithes, or rent-charge in lieu of tithes, have been paid for the same for twenty years prior to the day of sale.

Evidence of redemption of land-tax.

42. The purchaser shall require no other evidence that the land tax on the several lots has been redeemed, than a statement by the district collector of land-tax that his assessment books do not show any land tax to be payable [*or*, than a statutory declaration by the vendor or his agent (to be made at the purchaser's expense) that no land tax has been paid in respect thereof for the last —— years].

As to apportionment of rents and outgoings.

AS TO APPORTIONMENT OF RENTS AND OUTGOINGS.

Apportionment of land-tax and rent-charge.

43. In all cases where an entire sum for land-tax, rent-charge in lieu of tithes, or other outgoings, is payable in respect of the lands comprised in two or more lots, the same shall be apportioned amongst such several lots at the sums mentioned in the particulars at the foot of each lot respectively; and such apportionment shall be accepted by and binding upon the respective purchasers; and anything that may be requisite to be done or executed, for giving effect to such apportionment, shall be at the cost of the purchaser requiring the same; but the completion of any purchase shall not be delayed on account of any such requisition.

Apportionment of rents.

44. The lots are sold subject to the existing tenancies; and as to such lot or lots as are in tenancy with other property at

(*d*) Where a vendor is owner of lands, and of the tithes issuing out of them, but the tithes have not been merged, the particulars ought not to state the lands as tithe free.

When property is tithe free.

(*e*) A property is generally tithe free in virtue of a prescriptive composition, commonly called a *modus decimandi*, or by reason of a composition made under an Inclosure Act, or by a merger under the Tithes Commutation Acts, see 6 & 7 Will. IV. c. 71, s. 71, and 2 Vict. c. 64, ss. 1, 3; Burt. Comp. Ch. 6, s. 4.

AS TO APPORTIONMENT OF RENTS AND OUTGOINGS.

an entire rent or rents, the same shall be apportioned among such lots and other property as specified in the particulars, and every such apportionment shall be conclusive, and the tenant shall not be required in any case to consent to or concur in such apportionment.

Apportionment of rent on sale of leaseholds.

45. Lots 1 and 2 being held under one lease, at the entire rent of £——, the sum of £—— shall be the apportioned rent for lot 1, and the sum of £—— shall be the apportioned rent for lot 2; and the purchasers of the said lots shall enter into covenants for the payment of their respective proportions of the said rent.

Apportionment of rents and covenants by way of underleases.

46. The rent reserved by the lease under which the property is held shall be apportioned among the several lots as stated in the particulars. The purchaser of the largest lot in value shall take an assignment of the lease, and enter into the usual covenant with the vendor to indemnify him against the rent and lessee's covenants, and he shall grant to the other purchasers underleases of the lots purchased by them respectively for the residue of the term, wanting one day, subject to the said apportioned rents. Each underlease shall contain a covenant by the underlessee to pay the apportioned rent, and to observe the lessee's covenants contained in the original lease so far as the same relate to the lot comprised in the underlease, and the usual condition for re-entry for non-payment of rent or breach of covenants. If any lot shall remain unsold, the vendor shall stand in the place of the purchaser of the largest lot in value for the purposes of this condition. Every underlease to be granted under this condition and a counterpart thereof shall be prepared by and at the expense of the underlessee (*f*).

Apportionment of perpetual rent-charge issuing out of the property sold, and other property of the vendor.

47. The whole of the property comprised in the particulars, together with other property of the vendor not included in this sale, is subject to a perpetual yearly rent-charge of £——. Each of the lots shall be held subject to such proportion of the said rent-charge as is specified in the particulars, and each purchaser shall enter into a covenant with the other purchasers and with the vendor for the payment of the covenantor's proportion of the rent-charge, and to indemnify them respectively against

(*f*) See another form in Precedent No. IV., *supra*, p. 61.

the same. If any of the lots shall not be sold, the vendor shall for the purpose of this condition stand in the place of the purchaser of such lot or lots respectively. The residue of the rent-charge shall remain exclusively charged on the property retained by the vendor, and he shall in respect thereof enter into similar covenants with the several purchasers. Every deed of covenant and grant under this condition shall be prepared by and at the expense of the covenantee. The receipt for the last payment of the said rent-charge due prior to the day of sale shall be accepted as conclusive evidence that all the covenants and conditions contained in the indenture creating the said rent-charge, and on the part of the grantee to be observed and performed, have been duly observed and performed up to the day of sale.

AS TO APPORTIONMENT OF RENTS AND OUTGOINGS.

48. The dwelling-house now offered for sale is one of four dwelling-houses granted by a deed dated, &c., in consideration of a perpetual rent of £4 thereby reserved, and subject to certain covenants and conditions therein contained with respect to buildings and otherwise, the nature of which covenants and conditions may be ascertained by an inspection of the deed at any time prior to the completion of the purchase. This dwelling-house was afterwards conveyed to the vendor subject to a yearly sum of £1, part of the said rent-charge, and to the aforesaid covenants and conditions, so far as the same related to the said dwelling-house: and mutual covenants were entered into for indemnifying each party from the payment of the rent, and from the observance of the covenants which ought to be paid and observed respectively by the other party. The present sale is made on the footing of the above arrangement.

On sale of dwelling-house, subject to proportion of perpetual rent-charge.

As to indemnity against charges.

AS TO INDEMNITY AGAINST CHARGES.

49. Lot —— is subject to an annual payment of £—— to the poor of L——, which is also charged on other lands of considerable value. The purchaser shall accept the vendor's covenant that as between this lot and the other lands the other lands shall be charged with the whole of the said annual payment in exoneration of this lot, such covenant to be prepared by and at the expense of the purchaser.

Vendor's covenant to be indemnity against annual payment.

50. The property offered for sale is charged with a sum of £2,000, which will become payable to a son of the vendor, now

Part of the purchase-

AS TO INDEMNITY AGAINST CHARGES.

aged eighteen years, upon his attaining the age of twenty-one years, or upon the death of the vendor (which shall last happen). The vendor will enter into a covenant with the purchaser to satisfy the charge when it shall become payable, and to indemnify the purchaser therefrom, and will also set apart a sum of £—— out of the purchase-money and invest it in £2$\frac{3}{4}$ per cent. Consolidated Stock in the names of two trustees, one to be nominated by the vendor, and the other by the purchaser, upon proper trusts for the same purpose. The purchaser shall accept such covenant and declaration of trust as a sufficient indemnity against the said charge, and the deed or deeds containing the same shall be prepared by and at his expense.

money to be set apart to answer charge.

Indemnity against jointure and portions.

51. The property hereby offered for sale is, with other property, charged with a jointure of £——, payable to the vendor's wife, if she survives him, and with £——, for the portions of his children, who are at present infants. The vendor will convey to two trustees, one of whom shall be nominated by himself, and the other by the purchaser, the remaining property subject to these charges, upon proper trusts for raising the same out of such remaining property, in exoneration of the property hereby offered for sale, and will also furnish to the purchaser a statutory declaration by a competent land valuer, to the effect that such remaining property is worth at least £——. The purchaser shall accept such conveyance in trust and declaration as a sufficient indemnity against the charges.

Purchaser to be satisfied with indemnity of other lands against annuity.

52. The property comprised in the particulars is subject, together with other estates, to an annuity of £——, for the life of A. B. By an indenture, dated the —— day of ——, the vendor demised certain property not comprised in the particulars (which is also subject to such annuity) to two trustees, for 600 years, upon the trusts and under the powers therein mentioned, to the intent that the same might be an indemnity to the several purchasers and proprietors of all the remainder of the property of the vendor which might be liable to such annuity from the payment thereof. The lands so appropriated are of ample value for the purpose of such exoneration, and the purchaser shall not be entitled to make any objection on account of the existence of the annuity, or to inquire into the title thereto, or to require any further or additional indemnity to be given against the same, except (if required) the personal covenant of

the vendor for this purpose, to be prepared by and at the expense of the purchaser, or to require the concurrence of the annuitant; but the purchaser shall be entitled, at his own expense, to the usual statutory acknowledgment from the trustees of the said indenture of the right to production of such indenture.

AS TO INDEMNITY AGAINST CHARGES.

53. LOTS —— and —— are, with other property, charged with an annuity of £——, payable to A. B., during the widowhood of C. B., her mother, and a sum of £——, payable to A. B., on the death or marriage of the said C. B., and the concurrence of the said A. B. in the conveyance to the purchasers cannot be obtained. A sum of £—— has been invested upon mortgage of certain hereditaments in the names of the vendors for the purpose of indemnifying the several purchasers or proprietors of the several hereditaments subject to the aforesaid charges, and proper trusts in that behalf have been declared of the same. The purchasers shall be satisfied with this indemnity, and the production of the deed declaring the trusts of the indemnity fund, of which they may have a copy at their own expense. The vendors have taken the usual powers of altering or varying the securities for others of a like nature, and the purchasers shall not be entitled to inquire into the value of or title to the original or any substituted securities.

As to indemnity against annuity and gross sum.

54. THE several annual sums of £—— and £——, subject to which lots —— and —— respectively are in the particulars mentioned to be sold, are charged upon lands comprised in such lots respectively, together with lands of less value comprised in other lots, which are intended to be sold free therefrom. The several purchasers of lots —— and —— shall enter into covenants with the purchasers of the said other lots, for the payment of the said annual sums; which covenants shall be prepared by and at the expense of the covenantees, and shall be accepted by them as a sufficient indemnity against the said annual sums respectively.

As to indemnity against annual sums.

Miscellaneous.

MISCELLANEOUS.

55. ANY purchaser, who is willing to accept the vendor's title as shown by the abstract without making any requisition in respect thereof, may, on signifying his wish in writing to the vendor's solicitors within —— days after the delivery of the abstract to him, have a deed of conveyance (in a form already

Conveyance to be furnished to purchaser at a fixed sum.

MISCELLANEOUS.

settled, and which will be produced at the sale) executed and delivered to him free of cost, except stamp duty and a fee of £——.

Fixtures to be valued.

56. The tenant's fixtures shall be paid for by the purchaser at a valuation, to be made by two indifferent persons, or their umpire, to be appointed in the same manner as the referees, or their umpire mentioned in the —— Condition.

As to one of the vendors being an infant.

57. One of the vendors, the owner of one undivided sixth part of the property offered for sale, being an infant aged eighteen years, the other vendors will covenant with the purchasers for the confirmation of the sale by the infant when he shall attain the age of twenty-one years; and in the meantime one-sixth of the purchase-money shall be set apart and invested in Consols in the names of two trustees, one to be nominated by such other vendors and the other to be nominated by the purchaser, in trust for the infant if he shall confirm the sale upon attaining twenty-one, and if not, then in trust for the purchaser; and the dividends of the stock shall in the meantime be accumulated, and follow the ultimate destination of the principal stock.

Succession duty.

58. The vendors being a tenant for life (aged —— years), and remainderman, the purchaser shall take the property subject to the succession duty, which will become payable upon the death of the tenant for life (*f*).

Where sale made by trustees of a voluntary settlement.

59. The sale is made by the trustees for sale under a voluntary settlement made in the year 18— (less than ten years ago). The settlor will concur in the conveyance to the purchaser, and he will also (if required) make a statutory declaration to the effect that at the date of the settlement he was able to pay all his debts without the aid of the settled property. The purchaser shall make no objection to the title, on the ground of sect. 47 of the Bankruptcy Act, 1883 (*g*).

Succession duty on sale by tenant for life and remainderman.

(*f*) Where land is sold by a tenant for life and remainderman, it is considered that in the absence of special stipulation the purchaser is entitled to require that the succession duty, which will become payable on the death of the tenant for life, shall be compounded for by the vendors in advance under sect. 41 of the Succession Duties Act (16 & 17 Vict. c. 51). See Dart, V. & P. 667. It seems desirable to throw the burden on the purchaser. See observations on the subject in a note to "Agreements," Precedent No. X., *infra*, pp. 99, 100.

(*g*) This condition is rendered necessary by In re Briggs and Spicer, (1891) 2 Ch. 127.

MISCELLANEOUS.

60. WHEREVER in any document there is an exception of any hereditaments which have been previously sold, it shall be assumed that such excepted hereditaments did not include any part of the property comprised in the particulars. As to exceptions in documents.

61. THE purchaser shall make no objection on the ground that a certain indenture of mortgage, dated ——, is insufficiently stamped, and shall not require any further stamp duty to be paid thereon. Insufficient stamp.

62. IF any deeds or documents executed before the 16th May, 1888, shall be found to be unstamped or insufficiently stamped, which, however, is not known to be the case, no objection or requisition shall be made on that account. Stamps.

63. THE stamping or re-stamping of any instruments executed before the 16th May, 1888, which may be found to be unstamped or insufficiently stamped, shall be paid for by the purchaser, if he shall require the same to be done. Stamps.

64. THE purchaser shall make no objection on the ground that any deeds or documents are not registered or are defectively registered in the Middlesex Registry. [The vendor, however, is not aware of any such omission or defect]. Registration in Middlesex.

No. VI.

CONDITIONS OF SALE *of a* BUILDING ESTATE SOLD IN LOTS (*h*).

OF BUILDING ESTATE SOLD IN LOTS.

1 to 4. (*The same as in Precedent No. III.*, pp. 55, 56, *omitting in the 3rd Condition from "all outgoings" to the end.*)

5, 6. (*Time for making requisitions and power to rescind, and vendor to make assurances, supra*, p. 58.) Time for making requisitions.

(*h*) On a sale of building plots, the conditions as to building, &c. may be either inserted in the conveyance to each purchaser, or embodied in a general deed of covenants to be executed by all the purchasers. The above Precedent provides for either plan. Sometimes it is intended that the covenants shall be mutually enforceable by the several purchasers, *inter se*, and that for this purpose the vendor shall, as regards an unsold lot, stand in the place of a purchaser, and sometimes that the covenant shall be enforceable by the vendor only, so that he may be able to release or dispense with it if he thinks fit. Both alternatives are provided for in the above Precedent. Conditions on sale of building plots.

OF BUILDING ESTATE SOLD IN LOTS.

Lots sold subject to following conditions as to building, &c.

7. THE several lots are sold subject to the following conditions as to building and otherwise: (namely,) (1.) Every purchaser (*i*) shall within one calendar month after the completion of his purchase, erect and for ever afterwards maintain a good and sufficient fence on that side of the lot purchased by him which is marked T on the plan annexed to the particulars. (2.) No building or erection shall be set up on any lot nearer to the road in front thereof than is indicated by the line marked on the plan "building line." (3.) No building of any kind other than private dwelling houses, with appropriate offices and outbuildings to be appurtenant thereto and occupied therewith, shall be erected on any lot, and no trade or business of any kind shall be carried on upon any part of any lot. (4.) No more than two houses shall be erected on any one lot, and every house shall be either detached or semi-detached, and the sum expended on the erection of each house shall not be less than £—— for a detached house, or £—— for a pair of semi-detached houses. (5.) The purchaser of each lot shall pay a proportionate part of the expense of keeping in repair the road in front thereof according to the extent of the frontage until the road shall be taken to by the Local Board or other public authority, such proportion to be determined in case of difference by the vendor's surveyor.

Each purchaser to covenant with vendor to observe conditions.

8. EVERY purchaser shall by the deed of conveyance covenant with the vendor to observe the above conditions so far as the same apply to the lot purchased by him, and the covenant shall be so framed that the burden thereof shall run with the land as far as may be, but the covenantor shall be personally liable thereunder so long only as he is owner of the land.

Or,

Alternative condition. The several purchasers to execute deed containing covenants by them to observe conditions.

A DEED has been prepared (a draft of which may be seen at the office of the vendor's solicitors, on any day before the sale) containing covenants by the several purchasers to observe the aforesaid conditions so far as the same are applicable to the several lots purchased by them respectively [and a similar covenant by the vendor as regards any lot or lots not sold], the covenants being so framed as to bind the covenantors personally so long only as they shall remain owners of the land in respect

(*i*) The above are given as specimens of conditions; they will of course be varied according to the instructions.

whereof the same are entered into. Every purchaser shall execute the said deed on the completion of his purchase. OF BUILDING ESTATE SOLD IN LOTS.

9. All documents of title in the vendor's possession and also the deed of covenant to be executed pursuant to the last condition will be retained by the vendor, who will give to every purchaser a statutory acknowledgment of his right to production and delivery of copies thereof, and an undertaking for the safe custody thereof [and a notice of the said deed of covenant shall be endorsed on one of the principal title deeds retained by the vendor]. Vendor will retain documents, and give acknowledgment and undertaking as to the same.

(*Power to vendor to resell in case of default, and memorandum to be annexed to particulars and conditions, supra*, pp. 59, 60.)

No. VII.

CONDITIONS *of* Sale *as to* Reversionary Interests *in* Personalty, Policies, Annuities, Life Interests, &c.

OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &C.

1. The highest bidder shall be the purchaser; and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again at the last undisputed bidding. No person shall advance less than £—— at each bidding, and no bidding shall be retracted. The sale is made subject to a reserved price for each lot, and the vendor reserves the right to bid. Highest bidder. Advance.

2. Every purchaser shall, immediately after the sale, pay into the hands of the auctioneer a deposit of £—— per cent. in part of his purchase-money, and sign an agreement to pay the remainder, and complete the purchase according to these conditions on the —— day of —— next. Deposit.

3. The purchase of each lot shall be completed on the —— day of —— next, and if from any cause whatever any purchase shall not be completed on that day, the purchaser thereof shall pay interest on the remainder of the purchase-money after the rate of £5 per cent. per annum from that day until the completion of the purchase. Completion of purchase.

4. Every purchaser shall make all objections and requisitions (if any) in respect of the title or the particulars, or any- Time for sending requisitions.

OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &c.

thing appearing therein as to the lot or lots purchased by him, and send the same to the office of Mr. ——, within —— days from the delivery of the abstract; and all objections or requisitions which shall not be made within the time above specified shall be taken to be waived, and for the purpose of any objection or requisition the abstract shall be deemed perfect if it supplies the information suggesting the same, although otherwise defective; and in case any purchaser shall make any objection or requisition which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty, notwithstanding any intermediate negotiation on the subject of such objection or requisition or attempts to remove or comply with the same, by notice in writing to the purchaser by whom such objection or requisition shall be made, to rescind the sale: in which case the purchaser shall receive back the deposit without interest or costs, and shall return to the vendor the abstract of title and all other papers in his possession belonging to the vendor.

Preparation and execution of assurance.

5. Upon payment of the remainder of the purchase-money at the time and place above mentioned, the vendor shall execute proper assignments and assurances to the several purchasers of the lots purchased by them respectively; such assignments and assurances to be prepared by and at the expense of the purchasers, and to be left by them, at least —— days previous to the said —— day of —— next, at the office aforesaid for execution.

Reversions, policies, annuities, &c.

6. The purchasers, on payment of the remainder of the purchase-money, agreeably to the third condition, shall be entitled to all advantages on the reversions and policies from the hour of sale, and to the current half-year's dividends, or the interest on annuities, life interests, &c.; and all premiums on policies falling due or becoming payable between the day of sale and the completion of the purchase are to be paid by the several purchasers thereof.

Production of receipts for premiums last due to be evidence.

7. The production of the receipts for the premiums last due on the said policies of assurance shall be deemed sufficient evidence that the said policies are in full force at the time of the completion of the purchase, and the purchaser shall not require any evidence of the ages of the lives thereby assured, or that such ages have been proved to the satisfaction of the assurance office,

or any evidence in support of the statements on which the said policies were respectively granted.

OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &c.

Title to be deduced to reversionary legacy.

8. The title to lot —— shall commence with the will of A. B., late of ——, widow, under which the legacy mentioned in the particulars is derived, and by the trustees of whose will the same was paid into Court under the Trustees' Relief Act; but the vendor shall not be required to produce the probate of such will or any residuary or other accounts, or to prove that the reversionary interest forming the subject-matter of lot —— has not been otherwise encumbered than as in the particulars appears.

Vendor not to be required to produce deeds not in his possession.

9. Every purchaser shall be entitled, at his own expense, to examine his abstract with such deeds and other documents as are in the vendor's possession; but the vendor shall not be bound to produce or procure the production of any deeds, wills, or other documents whatsoever, not in his possession, either for the examination or verification of the abstract or otherwise, nor to procure attested or other copies of, or extracts from such deeds, wills, or other documents, nor to give any information in relation thereto; and the non-production of any such deeds, wills, or other documents, as are not in the vendor's possession, shall not be deemed an objection to the title. The vendor shall not be required to identify or otherwise prove by evidence not in his possession that the sum of stock,—the reversion to one third part of which forms lot —— of the particulars,—is the same as that given by the will of the said A. B., deceased.

Errors in particulars and compensation.

10. If any mistake or omission shall be discovered in the description of the property, or any error whatever shall appear in the particulars, such mistake, omission, or error shall not vitiate or annul the sale, but a compensation or equivalent shall be given or taken, as the case may require, the amount to be settled in case of difference by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference.

Vendor may re-sell in case of purchaser's default.

11. If any purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale, either by public auction or private contract, with or without notice to the purchaser at this present sale, and the deficiency (if any) occasioned by such second sale, together with all charges attending

OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &c.

the same, shall, immediately after such sale, be made good by the defaulter at this present sale; and in case of non-payment of the same, the whole thereof shall be recoverable by the vendor as and for liquidated damages; and it shall not be necessary for the vendor previously to tender an assignment to the purchaser or purchasers respectively.

No. VIII.

OF AN ESTATE SOLD UNDER A DECREE.

CONDITIONS *as to an* ESTATE SOLD *under an* ORDER *of the* CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE (*k*).

Advance.

1. No person is to advance less than £—— at each bidding.

Reserved bidding.

2. THE sale is subject to a reserved bidding for each lot, which has been fixed by the Judge to whom this cause is assigned.

Purchaser to subscribe his name, &c.

3. EACH purchaser is at the time of the sale to subscribe his name and address to his bidding, and the abstract of title and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

Deposit.

4. EACH purchaser is at the time of sale to pay a deposit of £—— per cent. on the amount of his purchase-money to ——, the person appointed by the said Judge to receive the same.

The chief clerk to verify the result.

5. THE chief clerk of the said Judge will after the sale proceed to certify the result, and the —— day of ——, at —— of the clock ——noon, is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the Royal Courts of Justice to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.

(*k*) This Precedent is identical with the form of "Ordinary Conditions of Sale," on a sale by the Court, which will be found in Appendix L. to the Rules of the Supreme Court, 1883.

OF AN ESTATE SOLD UNDER A DECREE.

6. THE vendor is, within —— days after such certificate has become binding, to deliver to each purchaser or his solicitor an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions, and each purchaser is within four days after the actual delivery of the abstract to deliver at the office of ——, solicitor at —— in the county of ——, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract; and upon the expiration of such last-mentioned time (and in this respect time is to be deemed of the essence of the contract), the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions (if any).

Delivery of abstract.

Time for delivery of objections.

7. EACH purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards (if any) on the lot purchased by him, down to 1*s.* per stick inclusive, the amount thereof to be ascertained by a valuation to be made in manner following (that is to say): each party (vendor and purchaser), or their respective solicitors, is within —— days after the chief clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof, in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

Timber to be valued and paid for.

8. EACH purchaser is, under an order for that purpose to be obtained by him, or in case of his neglect by the vendor at the costs of the purchaser, upon application at the chambers of the said Judge, to pay the amount of his purchase-money (after deducting the amount paid as a deposit) together with the amount of the valuation under the 7th condition (if any) into Court, to the credit of this cause, on or before the —— day of ——; and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount of such valuation, at the rate of £—— per cent. per annum from

Payment of purchase-money on order.

OF AN ESTATE SOLD UNDER A DECREE.

the —— day of —— to the day on which the same is actually paid. Upon payment of the purchase-money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the —— day of ——, down to which time all outgoings are to be paid by the vendor.

Error in particulars.

9. If any error, misstatement, or omission, shall appear to have been made in the above particulars, such error, misstatement, or omission, is not to annul the sale nor to entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser as the case may be, and the amount of such compensation is to be settled by the said Judge at Chambers.

[*Add to these such conditions respecting the title and title deeds as the conveyancing counsel shall advise to be necessary or proper.*]

Default of payment of purchase-money.

Lastly. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge upon application at his chambers for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such re-sale, and all costs and expenses occasioned by such default.

No. IX.

OF STANDING TIMBER.

CONDITIONS *of* Sale *of* Standing Timber.

Highest bidder to be the purchaser.

1. The highest bidder shall be the purchaser; and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again or not at the discretion of the auctioneer, who is to be the sole arbitrator in such dispute. The auctioneer is to have the right of refusing any bidding, and of withdrawing, consolidating, or dividing any lots contained in the particulars of sale.

Purchaser to take each lot according to description and with all faults.

2. The vendor shall not be answerable for the description of the lot after the fall of the hammer. The purchaser must take it with all faults, errors of description or number, and be at all

risks. No person to advance a less sum at each bidding than shall be named by the auctioneer, or retract his bidding, and the auctioneer shall be at liberty to bid once or oftener on each lot for the benefit of the vendor.

Payment of purchase-money.

3. The purchaser of each lot shall at the close of the sale, or of his bidding if required, pay into the hands of the auctioneer a deposit of twenty per cent. in part of his purchase-money, and give his name and place of abode, and shall also sign an agreement to complete the purchase according to these conditions; and each purchaser shall give the vendor his bill of seven months for the unpaid purchase-money for the oak, and his bill of four months for the unpaid purchase-money for the remainder of the timber, and each such purchaser shall, if required by the vendor or his agent, be provided with a responsible person or persons to join him in such bills respectively as aforesaid, such bills to be given to the auctioneer at the close of the sale, or within one week from the day of sale, the purchaser paying for the stamps; and not until the same shall be so given and executed, and such further security shall be given if required as hereinafter mentioned, shall the purchaser be allowed to enter on his lot or lots, or commence cutting the timber; and if he previously attempt to do so he shall be deemed a trespasser, and liable to pay to the vendor treble the amount of his purchase-money for such lot or lots, to be recovered as liquidated damages. Each purchaser shall at any time or times give further security if requested. The purchasers shall respectively pay to the auctioneer sixpence in the pound over and above the purchase-money for fees.

How the timber is to be felled and removed.

4. The trees are to be felled with as much care as possible, and the bark and wood thereof to be properly stacked, and removed only by the usual roads, and the purchasers are to be accountable for all damage done to any of the remaining timber, or otherwise to the estate of the vendor, or to cattle browsing on the grounds and premises; no tree is to be rooted up without the sanction of the vendor or his agent being first obtained, and the purchaser before the trees are thrown shall sever and cut off such boughs as are necessary to prevent such damage; and if any workman shall be objected to by the vendor, the purchaser shall on application or notice being given him for this

OF STANDING TIMBER.

purpose discharge such workman from off the estate, and the purchaser shall forfeit £5 for every tree or sapling cut which has not been marked for sale. No dogs are to be taken on any part of the estate, either by the purchasers or their workmen. All the oak timber is to be removed from off the lands in dry or frosty weather, having regard to the season, on or before the —— day of ——, 18—, and the remainder of the said timber is to be removed and cleared away before the —— day of ——, 18—, except lots ——, which shall be removed before the —— day of——, 18—. All lots remaining after the time before mentioned shall be forfeited to the vendor. Purchasers whose amounts shall not exceed £10 shall pay for the same on or before the —— day of ——, 18—. The whole of the tops shall be properly bundled immediately after the trees are felled, and shall be removed from off the lands within one month after such felling, and if not removed as aforesaid shall be forfeited.

When the timber is to be carried away, and how damage to be paid for.

5. The purchasers shall not enter on any arable lands after the same shall be sown with corn, or upon any grass land after the same is laid up until mown, nor upon any young grass, turnips, or other crops, to carry away the timber, without the consent of the respective occupiers until the crops are respectively cleared, and the whole of the timber is to be removed only by the roads and gaps appointed by the vendor or his agent. No purchaser will be allowed to sink pits for the conversion of his timber on the estate without the consent of the proprietor or his agent. Any injury or damage done to the property of the vendor or his tenants shall be ascertained by the auctioneer or any person he may appoint, whose award or determination of damages shall be final. The specified number of trees on the catalogue annexed shall be taken as correct. The whole of the timber shall be felled by the respective purchasers at their own expense, except lots ——, which shall be felled by and at the expense of the vendor.

Condition as to paying for and clearing away pollards, saplings, &c.

6. The purchasers of the pollards, saplings, poles, hurdlewood, and underwood, shall pay for the same at the close of the sale. The pollards, saplings, and poles shall be cleared off the premises by the —— day of ——, and the hurdlewood and underwood by the —— day of ——. The purchasers of the hurdlewood shall not cut any saplings that are marked, nor any saplings that are likely to become trees.

OF STANDING TIMBER.

Provisions in case of bankruptcy of purchaser before payment of purchase-money, &c.

7. No part of the timber, trees, wood, or bark shall be in anywise liable to be seized or taken by any person other than the vendor for the debts, or other engagements, if any, of the purchasers, until the whole of the purchase-money is paid, and satisfaction is made for damages as aforesaid, notwithstanding any bankruptcy of or any other thing whatsoever affecting the purchasers or any of them. The carriages used shall have broad wheels, and the usual roads shall not be deviated from but with the consent of the vendor or his agent.

Provisions for purchaser refusing to comply with previous conditions.

8. If any purchaser shall refuse or neglect to comply with the foregoing conditions, or attempt to remove any of the said timber from off the lands and premises before the purchase-money is paid or security given as aforesaid, then the deposit money shall be forfeited to the vendor, who shall be at liberty by himself or his agent to follow and stop the timber wherever it may be found, and to resell the same by public auction or private contract, and the deficiency, if any, together with all expenses attending the same, shall be made good by the defaulter or defaulters at this present sale, and be recoverable as and for liquidated damages, but any increase of price shall belong to the vendor.

AGREEMENTS FOR SALE.

No. I.

FOR SALE OF FREEHOLDS.

AGREEMENT *for the* SALE *of* FREEHOLD PROPERTY (*l*).

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B., of &c. (*vendor*), of the one part, and C. D., of &c. (*purchaser*), of the other part:—

Parties.

Agreement to sell and purchase.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple in possession, [subject to the existing tenancy thereof, and to all easements (if any) affecting the same], at the price of £——, [to be paid as follows, that is to say, the sum of £—— as a deposit immediately after the signing of this agreement, and the residue thereof on the completion of the purchase] (*m*).

Completion of purchase.

2. THE purchase shall be completed on the —— day of —— at the office of Mr. —— (the vendor's solicitor), and the purchaser shall from that day be entitled to the possession [*or* the receipt of the rents and profits] of the said premises, all outgoings up to that day being cleared by the vendor. If the

(*l*) Where the agreement for sale is by a married woman who has married since 1882, she will be described as "A. B., the wife of H. B., of &c., to whom she was married since the 31st day of December, 1882." If she was married before 1883, but has acquired the property to be sold since the 31st December, 1882, the date of the marriage will be omitted in the description of the vendor.

If the vendor is a tenant for life selling under the powers of the Settled Land Act, it is unnecessary to state this in the contract, which may be in the same form as if he were absolute owner.

(*m*) The words within brackets will be omitted, where no deposit is paid.

If the vendor is a tenant for life, the deposit (if any) should immediately on its receipt by the vendor or his solicitor be paid into a bank to the account of the trustees of the settlement.

FOR SALE OF FREEHOLDS.

purchase shall not be completed on the —— day of —— next, the purchaser shall pay to the vendor interest on [the residue of] the purchase-money after the rate of £4 per cent. per annum from that day until the completion of the purchase (*n*).

Commencement of title.

3. THE title shall commence with, &c. (*o*).

4. (*Condition as to identity—See Conditions of Sale, supra*, p. 50.)

5. THE description of the property in the schedule hereto is believed and shall be deemed to be correct, and no objection shall be made or compensation claimed on account of an error of description as to quantity [*or* measurement] or otherwise if any such shall be found.

Errors of description.

5A. THE quantities (*p*) of the several lands [*or* the measurements of the said premises] are believed and shall be deemed to be correctly stated in the schedule hereto, and no objection shall be made or compensation claimed on account of a slight error in quantity. If any other error or omission in the schedule

Interest.

(*n*) A purchaser of freeholds should object as a general rule to pay a higher rate of interest than 4 per cent.; and, even at this rate, the condition will in many cases operate unfairly on him. The delay in completion may arise from the state of the title or the slowness of the vendor's solicitor in replying to the requisitions, or from many causes over which the purchaser can exercise no control; and he may find himself in the position of having to pay interest while his money is lying idle. Under these circumstances a prudent purchaser will often be advised, either to object to the condition altogether, or to insist on a proviso being added to the following effect: "Provided always, that if the delay in completion shall arise from the state of the title, or from any other cause not being the purchaser's fault, the purchaser shall be at liberty to place [the remainder of] his purchase-money on a deposit account at the —— Bank, or on any securities which he may think fit, in his own name and at his own risk, and give notice thereof to the vendor, and thereupon the vendor shall be entitled to receive from the purchaser such interest only as shall be actually produced by such deposit or investment." If nothing is said about interest, the purchaser's obligation in this respect will be left to depend on the rule of equity—viz.: That from the day fixed for completion the purchaser is entitled to receive the rents, and must pay interest at 4 per cent. on his purchase-money; but unless the delay is his own fault, he may relieve himself of the liability to interest by giving the vendor notice that his money is lying idle. See *supra*.

(*o*) Insert after the 3rd article any special conditions which the state of the title may require. For forms of such conditions, see *supra*, pp. 62 to 75.

(*p*) If the quantities or measurements are stated in the schedule as "more or less," or "or thereabouts," the first part of this condition will be unnecessary; and where the vendor is satisfied that the description given must be correct, the whole condition may be omitted.

FOR SALE OF FREEHOLDS.

shall be discovered before the completion of the purchase, such as in the absence of this condition would entitle either party to relief, compensation shall be allowed in respect thereof to or by the purchaser, as the case may require, the amount to be settled (in case of difference) by two referees, one to be appointed by each party, or by an umpire, to be appointed by the two referees before they proceed in the reference. But this condition is without prejudice to the right of the vendor to rescind under the next condition.

Objections and requisitions.

6. All objections and requisitions in respect of the title or the abstract, or the description of the property in the schedule hereto, shall be stated in writing, and sent to the office of the said Mr. —— (the vendor's solicitor) within —— days from the delivery of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived, and for the purpose of any objection or requisition the abstract shall be deemed perfect, if it supplies the information suggesting the same, though otherwise defective; and if the purchaser shall insist on any objection or requisition which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation in respect thereof, or any attempt to remove or comply with the same), by notice in writing, to rescind this agreement, and the purchaser shall forthwith return to the vendor the abstract of title, and any other papers in his possession belonging to the vendor, and he shall have no claim on the vendor for costs or otherwise. But the purchaser may, within seven days after receiving the notice to rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

Vendor to execute assurance.

7. Upon payment of the purchase-money at the times and in manner aforesaid the vendor shall make and execute to the purchaser a proper assurance of the premises, such assurance to be prepared by and at the expense of the purchaser, and to be left by him not less than seven days before the said —— day of —— at the office aforesaid for execution by the vendor (*q*).

(*q*) Where the sale is made by trustees, Clause No. 6, in Precedent No. VI., p. 96, *infra*, will be substituted for the above. If the title deeds relate to other property they will be retained by the vendor under the Vendor and Purchaser Act, s. 2, and no special condition to this effect is necessary.

FOR SALE OF FREEHOLDS.

8. If the purchase is completed, the purchaser shall be entitled, as from the date of this agreement, to the benefit of the existing insurance of the property against loss or damage by fire, and the vendor shall be deemed a trustee thereof for him. The vendor shall be under no obligation to renew the insurance at the end of the current year, but if he does so, the premium paid for such renewal shall be repaid to him by the purchaser upon completion (*r*).

In witness, &c.

The Schedule above referred to.

No. II.

AGREEMENT *for the* Sale *of* Copyhold Property.

FOR SALE OF COPYHOLDS.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part:— Parties.

1. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, being copyhold of the manor of ——, in the county of ——, and the inheritance thereof, according to the custom of the said manor, in possession, subject to the customary rents, suits, and services [and subject also to the existing tenancy thereof], at the price of £—— [to be paid, &c. (*as in Article* 1 *of Precedent No. I., supra*, p. 86)]. Agreement to sell and purchase.

(*Remaining conditions as in Precedent No. I.*)

In witness, &c.

The Schedule above referred to.

(*r*) This clause will be inserted where the property sold consists of a house or buildings which have been insured by the vendor. See Rayner *v.* Preston, 18 Ch. D. 1; Castellain *v.* Preston, 11 Q. B. D. 381.

No. III.

FOR SALE OF LEASEHOLDS.

AGREEMENT *for the* SALE *of* LEASEHOLD PROPERTY.

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part:—

Agreement to sell and purchase.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, all that messuage or dwelling house being No. —, in —— Street, held by lease, dated the —— day of —— for the unexpired residue of a term of —— years computed from the —— day of ——, subject to the yearly rent of £——, and to the covenants and conditions contained in the lease and on the lessee's part to be observed and performed at the price of £—— [to be paid, &c., *as in Precedent No. I., supra*, p. 86].

2. (*Condition as to completion of the purchase and interest—See Precedent No. I., supra*, p. 86.)

Commencement of title.

3. THE title to the said premises shall commence with the said lease (which has been produced to the purchaser), and the production of the receipt for the last payment of rent which shall have become due thereunder shall be deemed conclusive evidence that all the covenants and conditions therein have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived (*s*). (*Insert here any other special conditions which the state of the title may require*).

When leasehold is valuable, contract should enable purchaser to require production of lessor's title.

(*s*) When the leasehold property is valuable, being subject only to a ground rent, and the lease is a recent one, and the lessor not a person whose title is well known, a prudent purchaser will insist on the contract containing a stipulation enabling him to require the production of some evidence of the lessor's title, particularly as the statutory rule does not protect him from the application of the doctrine of constructive notice as regards equities which he would have discovered had he duly investigated the title. See Patman *v.* Harland, 17 Ch. D. 353. If the vendor is unable to comply with such a stipulation, not having himself inquired into the title when he took the lease, the purchaser should be advised by his solicitor as to the risk which he incurs, and must be left to decide for himself whether in the face of such risk he desires to proceed with the purchase.

4. (*Conditions as to objections and requisitions.—See Precedent No. I., supra*, p. 88.) FOR SALE OF LEASEHOLDS.

5. On payment of the purchase-money at the time and in manner aforesaid the vendor shall make and execute a proper assignment of the said premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to be left by him not less than seven days before the said —— day of —— at the office aforesaid, for execution by the vendor. Vendor to execute assignment to purchaser.

In witness, &c.

No. IV.

AGREEMENT *for the* Sale *of* Leasehold Property *held by an* Underlease, *and the* Tenant's Fixtures. FOR SALE OF LEASEHOLDS AND FIXTURES.

MEMORANDUM OF AGREEMENT, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part:— Parties.

1. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the leasehold messuage and premises described in the schedule hereto, for the unexpired residue of the term of ninety-nine years, wanting the last ten days thereof, granted therein by the indenture of underlease mentioned in the said schedule, subject to the rent reserved by the said indenture of underlease, and the covenants and conditions therein contained and on the lessee's part to be observed and performed, and also the tenant's fixtures in and about the said premises, at the price of £—— [to be paid, &c. (*as in Precedent No. I., supra*, p. 86)]. Agreement to sell and purchase.

2. The title shall commence with the said underlease, and inasmuch as copies of the said underlease and of the superior lease have been produced to the purchaser before the signing of this agreement, he shall be deemed to have full notice of the Commencement of title, &c.

FOR SALE OF LEASEHOLDS AND FIXTURES.

contents of both instruments. The production of the last receipt, &c. (*the rest the same as Precedent No. III.*).

In witness, &c.

The Schedule above referred to.

The messuage or dwelling-house being No. —, —— Street, in the parish of ——, with the stables and appurtenances thereto belonging, now in the occupation of ——, which premises were, by an indenture of underlease, dated the —— day of ——, and made, &c., demised unto the said —— (*original sublessee*), his executors, administrators, or assigns, for the time of ninety-nine years, wanting the last ten days thereof, computed from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions contained in the said indenture of underlease, and on the underlessee's part to be observed and performed.

No. V.

LEASEHOLD SHOP AND BUSINESS.

AGREEMENT *for the* Sale *of a* Leasehold House *and* Shop *and the* Stock in Trade *and* Goodwill *of the* Business *carried on there.*

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part:—

Parties.

Agreement for sale and purchase of leasehold premises and goodwill for a fixed sum,

1. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the leasehold messuage or tenement and shop, being No. —, —— Street, in the town of ——, held for the residue of a term of —— years granted therein by an indenture of lease, dated, &c., at the yearly rent of £——, and subject to the lessee's covenants and conditions contained in the said indenture of lease, and also the goodwill (*u*) of the business of ——, now

When vendor is to be allowed

(*u*) If it is intended that the vendor shall be at liberty, after the sale, to carry on a similar business in the neighbourhood, the expression "good-

carried on by the said A. B. on the said premises, at the price of £——. The vendor also agrees to sell, and the purchaser agrees to purchase, the tenant's fixtures in and about the said premises, and the stock in trade and book and other debts belonging and due and owing respectively to the said A. B., and the benefit of all contracts and engagements entered into with him in respect of the said business, at a sum to be determined by valuation as hereinafter is mentioned.

LEASEHOLD SHOP AND BUSINESS.

and tenant's fixtures and stock in trade at a valuation.

2. The purchaser shall, immediately after the signing of this agreement, pay to the vendor the sum of £—— by way of deposit. The purchase shall be completed on the —— day of —— next, at the office of, &c., and the purchaser shall, as from that day, have possession of the said premises, and be the proprietor of the said business subject to the following conditions.

Deposit and completion of purchase.

3. The title shall commence, &c. (*supra*, p. 90).

4. The tenant's fixtures, stock in trade and effects, book and other debts, shall be valued according to the value of the same on the —— day of —— next, and the valuation shall be made by L. M., of, &c., who is appointed for this purpose by the vendor, and N. O., of, &c., who is appointed for this purpose by the purchaser, or in case the said valuers shall disagree, then by P. Q., of, &c., who has been appointed umpire by the valuers. If either of the valuers shall die before the valuation is completed, or shall refuse to act, another valuer shall be appointed in his place by the party by whom the deceased or refusing valuer was appointed; and if the umpire shall die before the valuation is completed, or shall refuse to act, the valuers shall appoint another umpire.

Valuation of fixtures &c.

will" should be qualified by some explanation in the contract or particulars of sale. Thus, in Johnson *v.* Helleby, 34 L. J. Ch. 179, the question arose how the goodwill of a business, which upon the death of one of the partners had been directed to be sold as a going concern, should be described, and more particularly whether the existence of the right of the surviving partner to carry on a like trade in the same town should be mentioned in the particulars; and the Court directed that the following words should be inserted at the foot of the advertisement for sale:—"This sale will give to the purchasers both the premises on which the business has been carried on and the benefit to be derived from the habit of customers resorting to the said premises; but will not prevent persons formerly interested in the said business, or those who may represent them, from carrying on the same business."

to carry on business in neighbourhood.

LEASEHOLD SHOP AND BUSINESS.

Purchase-money to be paid by instalments.

5. The purchaser shall pay the remainder of his purchase-money (including the amount of the aforesaid valuation) at the times following: (that is to say,) one third part thereof on the —— day of —— next, one third part thereof on the —— day of ——, 18—, and the remaining one third part thereof on the —— day of ——, 18—, and the instalments of purchase-money for the time being remaining unpaid shall bear interest after the rate of £— per cent. per annum, computed from the said —— day of —— next.

Vendor to assign on completion.

6. Upon the payment on the —— day of —— next of the instalment of purchase-money hereby made payable on that day, the vendor shall make and execute to the purchaser a proper assignment of the said premises, such assignment to be prepared by and at the expense of the purchaser, and the vendor shall, in and by such assignment, covenant with the purchaser not to carry on a similar business in the said town of ——, or within a distance of —— miles therefrom.

Purchaser to secure unpaid instalments of purchase-money by bond and mortgage.

7. At the same time with the execution of the said assignment, the purchaser, and two sureties to be approved of by the vendor, shall execute to the vendor their joint and several bond or covenant for the payment of the remaining instalments of the said purchase-money, and the interest thereof, at the times and in the manner above provided; and the purchaser shall also make and execute to the vendor a proper and effectual mortgage of the said leasehold premises, for further securing the payment of the said instalments and interest, such mortgage to contain such powers and provisions as the vendor may reasonably require.

How business is to be carried on in meantime.

8. In the meantime, and until the completion of the said purchase, the business shall be carried on by the vendor as at present, for his own benefit, but the purchaser shall act as his manager, and shall receive the weekly sum of £—— by way of salary as such manager.

Purchaser to accept lessor's title.

9. The purchaser has examined the title of the vendor to the said leasehold premises, and he is satisfied therewith, and hereby undertakes to accept the same as it stands.

In witness, &c.

No. VI.

AGREEMENT *for the* SALE *by* TRUSTEES *of an* ESTATE *comprising* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS.

SALE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part:— Parties.

1. THE said A. B. and C. D. (hereinafter called the vendors) agree to sell, and the said E. F. (hereinafter called the purchaser) agrees to purchase, at the price of £——, ALL the messuages, lands, and hereditaments, situate in the parish of ——, in the county of ——, described in the first part of the schedule hereto, and the inheritance thereof in fee simple in possession; AND ALSO the messuages, lands, and hereditaments, being copyhold of the manor of ——, in the said county, described in the second part of the said schedule, and the customary inheritance thereof in fee simple in possession; AND ALSO the messuages, lands, and hereditaments, situate in the said parish of ——, described in the third part of the said schedule for all the residue now unexpired of the term of —— years, granted therein by an indenture of lease, dated, &c., and made, &c., subject as to the said copyhold hereditaments to the customary rents and services, and as to the said leasehold hereditaments to the rent reserved by the said indenture of lease, and the covenants and conditions therein contained, and on the lessee's part to be observed and performed, [and subject also as to all the said hereditaments to the existing tenancies thereof, mentioned in the said schedule, and to all rights of way and water and other easements (if any) affecting the same]. Agreement to sell and purchase.

2. IN addition to the said sum of £——, the purchaser shall pay for all timber, and timber-like trees, tellers, pollards, and saplings, down to the value of 1*s.* per stick inclusive, standing or growing upon the said premises, according to a valuation to be made in manner following (that is to say): Each party shall by writing appoint a valuer and give notice thereof by writing to the other party within fourteen days after the signing of this agreement, and the valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or (if they disagree) their umpire, shall make the valua- Valuation of timber.

SALE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

tion. If either party shall neglect to appoint a valuer or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. The expression "the purchase-money" used in this agreement shall include the amount of the valuation to be made under this article.

3, 4, 5. (*Conditions as to completion of the purchase and payment of interest—commencement of title and time for making requisitions,* —*See Precedent, No I.*, pp. 86—88.)

Vendors to execute assurance to purchaser.

6. UPON payment of the purchase-money at the time and in manner aforesaid, the vendors (who are trustees) shall make and execute a proper assurance of the said premises to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left at the office aforesaid at least seven days before the said —— day of —— next, and the same shall include the usual statutory acknowledgment as regards documents retained by the vendors as relating also to other property, but not an undertaking for their safe custody. The concurrence of the persons beneficially interested in the purchase-money shall not be required.

(*Other conditions as in Precedent No. I.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VII.

FOR SALE OF FREEHOLDS SUBJECT TO APPROVAL OF COURT.

AGREEMENT *for the* SALE OF FREEHOLDS *subject to the* APPROVAL *of the* COURT.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part:—

Parties.

Subject to approval of Court, agreement to sell and purchase.

1. SUBJECT to the approval of the Chancery Division of the High Court of Justice in a cause of, &c. (*describe the cause*), the said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, &c.—(*See Precedent No. I., supra*, p. 86.)

2 to 7, *as in Precedent No. I.*

FOR SALE OF FREEHOLDS SUBJECT TO APPROVAL OF COURT.

8. The vendor shall at his own expense forthwith take and carry to completion all necessary steps and proceedings, and use his best exertions to obtain by means of an application to the Court its approval of this agreement.

Vendor to take steps to obtain approval of this agreement by the Court.

9. This agreement shall be void unless the vendor shall at his own expense, within —— calendar months from the date of these presents, obtain the approval by the Court thereof, either in its general form and terms, or with such variations therein as shall within the like time be assented to by the vendor and purchaser.

Agreement to be void unless approval of Court obtained within a given time.

In witness, &c.

No. VIII.

AGREEMENT *for the* Sale *of a* Life Estate *in* Freeholds.

FOR SALE OF LIFE ESTATE.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part :—

Parties.

1. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, All that the estate for life, without impeachment of waste, of the vendor in All, &c. (*parcels*), at the price of £—— [to be paid as follows, &c.—(*See Precedent No. I., supra*, p. 86)].

Agreement to sell and purchase.

Other conditions as in Precedent No. I., so far as applicable, adding the following :—

This agreement shall not be rendered void, or be in anywise affected by the death of the vendor before the said —— day of —— next.

Agreement not to be rendered void by death of vendor.

In witness, &c.

No. IX.

FOR SALE OF REVERSIONARY ESTATE.

AGREEMENT *for the* SALE *of a* REVERSIONARY ESTATE *in* FREEHOLDS.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part :—

Parties.

Agreement to sell and purchase.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THOSE (*parcels*), and the inheritance thereof in fee simple, free from incumbrances (subject nevertheless to the estate therein of G. H. of, &c., during his life, which estate is without impeachment of waste), at the price of £——.

Completion of purchase.

2. THE purchase shall be completed on the —— day of —— next at the office of Mr. ——, the vendor's solicitor, and if from any cause whatever the purchase is not completed on that day, the purchaser shall pay interest on the said purchase-money after the rate of £—— per cent. per annum, computed from that day until the completion of the purchase.

3, 4. (*Conditions as to commencement of title and time for making requisitions, as in Precedent No. I., supra*, pp. 87, 88.)

Vendor to execute assurance.

5. ON payment of the purchase-money at the time and in manner aforesaid the vendor shall execute to the purchaser a proper assurance of the said premises, subject to the said life estate, such assurance to contain a covenant by the purchaser for the payment of the succession duty, to become payable upon the death of the said G. H., and for indemnifying the vendor therefrom (*x*) : and the said assurance shall be prepared by and at the expense of the purchaser, and shall be left by him not less than seven days before the said —— day of —— next, at the office aforesaid, for execution by the vendor.

As to deeds in possession of tenant for life.

6. THE documents of title relating to the said premises are in the possession of the said G. H. as tenant for life, and on his death such of the said documents as relate exclusively to the said premises shall be delivered to the purchaser, and such of them as relate also to other property of the vendor, shall be

(*x*) As between vendor and purchaser of a reversion, the purchaser must pay the succession duty. Cooper *v.* Trewby, 28 Beav. 194.

retained by him, and he shall give to the purchaser the usual statutory acknowledgment and undertaking in respect thereof. FOR SALE OF REVERSIONARY ESTATE.

7. This agreement shall not be rendered void by the death of the said G. H. before the said —— day of ——. Agreement not to be rendered void by death of tenant for life.

In witness, &c.

No. X.

AGREEMENT *for* Sale *by* Tenant for Life *and* Remainderman. FOR SALE BY TENANT FOR LIFE AND REMAINDERMAN.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (who is tenant for life of the hereditaments hereby agreed to be sold), of the first part, C. D. of, &c. (who is tenant in fee simple in remainder of the said hereditaments), of the second part, and E. F. of, &c. (*purchaser*), of the third part :— Parties.

1. The said A. B. and C. D. (hereinafter called the vendors) agree to sell, and the said E. F. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple in possession, subject to the succession duty (if any) to become payable on the death of the said A. B., and which duty if it shall become payable will be at the rate of £—— per cent., at the price of £——. Agreement to sell and purchase.

(*Remainder of precedent same as Precedent No. I.* (*y*).)

In witness, &c.

The Schedule above referred to.

(*y*) If A., tenant for life, and B., tenant in remainder, join in conveying the fee simple in possession to C. a purchaser, succession duty will become payable under the 15th section of the Act on the death of A., at the same rate as if no alienation had been made, provided that no new succession is created in the meantime. Thus, if C. is living without having again aliened, at the death of A., C. will have to pay duty at the same rate as B. would have had to pay, but the actual sum to be paid will be different, as it will be calculated on the value of C.'s (not B.'s) life. But if C. dies before A., his heir or devisee will have to pay duty at once as on a succession derived from C., and on A.'s subsequent death no further duty will be payable. *In re* Cooper and Allen's Contract, 4 Ch. D. 802. Although Stipulation as to succession duty, on sale by tenant for life and remainderman.

No. XI.

FOR SALE SUBJECT TO FEE FARM.

AGREEMENT *for the* SALE *of* FREEHOLDS *which are subject to a* PERPETUAL *yearly* RENTCHARGE.

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Agreement to sell and purchase.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple, subject to a fee farm rent of £10 created by an indenture dated the —— day of ——, and certain covenants and conditions contained in the same indenture as to buildings and otherwise, at the price of £——.

2, 3. (*Conditions as to completion and commencement of title, supra*, pp. 86, 87).

Receipt for last payment of rent to be evidence.

4. The receipt for the last payment of the said rent of £10 which shall have become due prior to the completion of the purchase shall be accepted by the purchaser as conclusive evidence of the performance of the covenants and conditions contained in the said indenture of the —— day of —— up to the completion of the purchase, and the vendor shall not be required to deduce the title to the said rent, or to show that the person giving such receipt is the present owner thereof.

(*Other conditions as in Precedent No. I.* (*y*).)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

the liability to duty is contingent only, it is conceived that, in the absence of stipulation, a purchaser from tenant for life and remainderman is entitled to insist on its being commuted before its completion, under sect. 41 of the Act. It seems desirable, where the duty would be heavy, to guard against such a requisition by a clause in the contract, because, although the purchaser will probably give less on account of the liability, the deduction, having regard to the contingency that the duty may not become payable at all, ought not to be so much as would have to be paid for the commutation.

(*y*) *Adding at the end of Clause* 7 *as follows:*

The assurance shall contain a covenant by the purchaser to indemnify the vendor against the covenants entered into by the latter in the above-mentioned indenture.

No. XII.

AGREEMENT *for the* SALE *of an* ADVOWSON.

FOR SALE OF ADVOWSON.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:— Parties.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THAT the advowson and perpetual right of presentation of and to the rectory and parish church of ——, in the county of ——, and the inheritance thereof in fee simple, free from incumbrances, at the price of £——, to be paid as follows (that is to say), the sum of £——, part thereof, immediately after the signing of this agreement, and the sum of £——, residue thereof, on the —— day of —— next, at the office of Messrs. —— (the vendor's solicitors), at which time and place the purchase is to be completed. Agreement to sell and purchase.

2. THE title shall commence, &c. Commencement of title.

3. (*Condition as to time for making requisitions, supra*, p. 88.)

4. UPON payment of the purchase-money at the times and in manner aforesaid the vendor and all other necessary parties (if any) shall execute a proper assurance of the said advowson to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at least seven days before the said —— day of ——, at the office aforesaid, for execution by the vendor. Vendor to execute assurance.

5. [If through the default or neglect of either party the purchase shall not be completed on the said —— day of ——, then the other party may, by notice in writing, rescind this agreement, and in such case the defaulting or neglecting party shall pay and reimburse to the other party the costs and expenses which shall have been previously incurred by him in or about this agreement, or the carrying of the same into effect, or otherwise in relation thereto (*a*).] Power to either party to rescind contract in a certain case.

(*a*) This clause will only be inserted when expressly stipulated for.

FOR SALE OF ADVOWSON.

Interest.

6. If the purchase shall not be completed on the —— day of —— next, and if this agreement shall not be rescinded under Article 5, the purchaser shall pay interest on the residue of the purchase-money, after the rate of £—— per cent. per annum, from the said —— day of —— next, until the completion of the purchase.

On vacancy of benefice before completion vendor to present nominee of purchaser.

7. If the said benefice shall become vacant before the said —— day of —— next, the vendor shall, upon payment of the purchase-money, present thereto the nominee of the purchaser.

In witness, &c.

No. XIII.

AGREEMENT *for the* Sale *of a* Next Presentation.

FOR SALE OF NEXT PRESENTATION.

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Agreement to sell and purchase.

1. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, All that the next presentation to the rectory and parish church of ——, in the county of ——, of which the Rev. —— is the present incumbent, at the price of £——, to be paid as follows, the sum of £——, part thereof, immediately after the signing of this agreement, and the sum of £——, residue thereof, on the —— day of —— next, at the office of Messrs. —— (the vendor's solicitors), at which time and place the purchase is to be completed.

2, 3. (*As in last Precedent.*)

Vendor to execute assurance.

4. Upon payment of the purchase-money at the times and in manner aforesaid, the vendor and all other necessary parties (if any) shall execute a proper assurance of the said next presentation to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at least

seven days before the said —— day of ——, at the office aforesaid, for execution by the vendor. FOR SALE OF NEXT PRESENTATION.

5, 6. (*Conditions as to rescinding the agreement on non-completion at the time specified, and as to interest as in last Precedent.*)

7. If the said benefice shall become vacant before the said —— day of —— next, the vendor shall, on payment of the purchase-money, present thereto the nominee of the purchaser (*b*). As to vacancy before completion.

In witness, &c.

No. XIV.

AGREEMENT *for the* Sale *of an* Advowson, *or* Next Presentation, *and of an* Annual Sum *equal to* Interest *on the* Purchase-money *until a* Vacancy (*c*). FOR SALE OF ADVOWSON AND ANNUAL SUM.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:— Parties.

1. The said A. B. (hereinafter called the vendor), agrees to sell, and the said C. D. (hereinafter called the purchaser), agrees Agreement to sell and purchase.

(*b*) If after the sale of a next presentation the incumbent is promoted to a bishopric, so that the next turn devolves on the Crown, the purchaser will, in the absence of a stipulation to the contrary, be entitled to the next presentation after that by the Crown. It is obvious, however, that such a postponement of the purchaser's right to present would seriously diminish the value of his purchase, and would in many cases entirely defeat the object with which he has purchased. Whenever, therefore, there is a probability of the present incumbent being made a bishop, a prudent purchaser will stipulate that such an event shall put an end to the contract, and obtain security for the repayment of his purchase-money. The best mode of effecting this object would be to make the arrangement provided for by Precedent XV., *infra*. Stipulation in contract for sale of advowson, to provide for possibility of incumbent being made a bishop.

(*c*) It is sometimes made part of the arrangement on the purchase of an advowson or next presentation, that the purchaser shall receive interest on his purchase-money until a vacancy. Such an arrangement may be effected in two modes, (1) by the vendor giving to the purchaser his bond for an annual sum equal to interest at the rate stipulated on the purchase-money; or (2) by investing the purchase-money in the names of trustees, upon trust to pay the income thereof to the purchaser until a vacancy. Such an arrangement has been held valid when the vendor Arrangement that purchaser shall receive interest on the purchase-money until a vacancy.

FOR SALE OF ADVOWSON AND ANNUAL SUM.

to purchase, for the sum of £——, ALL THAT, &c. (*describe advowson or next presentation, as the case may be*), and also an annual sum of £——, being equal to interest on the said sum of £—— after the rate of £4 per cent. per annum, to be paid for such period and in such manner, and to be so secured as hereinafter mentioned, the said purchase-money to be paid on the —— day of —— next, at the office of Mr. —— (the vendor's solicitor), at which time and place the purchase is to be completed.

Vendor to execute assurance of advowson, and also bond to secure annual sum.

2. UPON payment of the purchase-money as aforesaid the vendor and all other necessary parties (if any) shall make and execute a proper assurance of the said (*advowson or next presentation, as the case may be*), and shall also give and execute to the purchaser his (the vendor's) bond in a sufficient penalty conditioned for the payment to the purchaser, his executors and administrators, of the said annual sum of £——, commencing from the —— day of —— next, and to be payable until the day on which the said benefice shall next become vacant, and to be payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of —— next (*d*). The assurance and bond to be executed as aforesaid shall be prepared by and at the expense of the purchaser, and shall be left by him at least seven days before the said —— day of —— next, at the office aforesaid, for execution by the vendor.

(*Remaining clauses as in Precedent No. XII.*)

IN WITNESS, &c.

is not the incumbent (Sweet *v.* Meredith, 3 Giff. 610); and it is conceived, though it has never been expressly decided, that the circumstance of the vendor being the incumbent would make no difference, provided that the interest made payable by the vendor during his incumbency does not exceed the ordinary rate of interest. If, however, the vendor, the incumbent, should afterwards resign, and thus become relieved from further payment of interest, a serious question might arise as to whether such resignation were not simoniacal within the meaning of the Act 31 Eliz. c. 6, s. 7.

(*d*) Six calendar months after the day appointed for completion.

No. XV.

AGREEMENT *for the* SALE *of an* ADVOWSON, *or* NEXT PRESENTATION, *where it is part of the* ARRANGEMENT *that the* PURCHASE-MONEY *shall be* INVESTED *until a* VACANCY, *and the* INCOME RECEIVED *by the* PURCHASER (*e*).

FOR SALE OF ADVOWSON AND INVESTMENT OF PURCHASE-MONEY UNTIL VACANCY.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:— Parties.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THAT, &c. (*describe advowson, or next presentation, as the case may be*), at the price of £——: the purchase to be completed in the manner hereinafter mentioned, on the —— day of —— next, at the office of Mr. ——, the vendor's solicitor. Agreement to sell and purchase.

2, 3. (*Conditions as to commencement of title and time for making requisitions—as in Precedent No. I.*)

4. UPON the —— day of —— next, the purchaser shall pay the said purchase-money of £—— to two trustees, one to be nominated by the vendor and the other by the purchaser, upon trust to invest the same in £2$\frac{3}{4}$ per cent. Consolidated Stock, and pay the dividends thereof to the purchaser, his executors or administrators, until the said benefice shall next become vacant, and subject to the trust aforesaid, and also to Article VIII., in trust for the vendor, his executors, administrators, and assigns. And upon payment of the said purchase-money as aforesaid, the vendor shall execute a proper assurance, &c., *supra*, p. 101. Purchase-money to be invested.

5, 6, 7. (*Power to rescind contract—as to interest—and on vacancy of benefice before completion vendor to present nominee of purchaser, as in Precedent No. XIII.*)

8. IF the next presentation shall devolve on the Crown by reason of the promotion of the present incumbent to a bishopric, this agreement shall be void, and the Consolidated Stock, representing the purchase-money, shall thereupon be transferred to the purchaser as his absolute property (*f*). Provision in case next presentation devolves on Crown.

IN WITNESS, &c.

(*e*) See p. 103, *supra*, note (*c*). (*f*) See p. 103, *supra*, note (*b*).

No. XVI.

FOR SALE WHERE PART OF PURCHASE-MONEY REMAINS ON MORTGAGE.

AGREEMENT *for* SALE *where* PART *of the* PURCHASE-MONEY *is to* REMAIN *on* MORTGAGE *of the* PROPERTY *for* A CERTAIN PERIOD.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

Agreement to sell and purchase.

1. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THOSE, &c. (*parcels*), and the inheritance thereof in fee simple in possession, at the price of £3,000.

2 to 4. (*Conditions as to commencement of title, misdescriptions, and time for making requisitions, supra*, pp. 87, 88.)

Time for completion of purchase.

5. THE purchase shall be completed on the —— day of —— next, and from that day the purchaser shall be entitled to the rents and profits of the said premises, all outgoings up to that day being discharged by the vendor. If from any cause whatever the purchase shall not be completed on the said —— day of ——, the purchaser shall pay to the vendor interest on the said purchase-money from the said —— day of —— until the completion of the purchase, after the rate of £4 per cent. per annum.

Vendor to execute assurance.

6. UPON the completion of the purchase, the vendor shall execute to the purchaser a proper assurance of the said premises; and as some of the documents of title relate to other property of the vendor, as well as to the said premises hereby agreed to be sold, the same shall be retained by him upon his giving to the purchaser by such assurance an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody. The said assurance shall be prepared by and at the expense of the purchaser.

Part of purchase-money to remain on mortgage.

7. UPON the completion of the purchase, the purchaser shall pay to the vendor the sum of £1,000, part of the said purchase-money, and the sum of £2,000 (residue thereof) shall remain on mortgage of the said premises, at interest after the rate of £4 per cent. per annum, payable half-yearly. And by the mortgage-deed the said principal money shall be made

payable on the —— day of —— next, but subject to provisoes precluding the mortgagee from calling in the same during a term of —— years, computed from the —— day of —— next, in case interest shall be regularly paid in the meantime within thirty days after the several half-yearly days of payment thereof respectively, and in case the mortgagor shall duly observe the covenants (other than the covenants for payment of principal and interest) to be contained in the mortgage-deed; and also precluding the mortgagor from compelling the mortgagee to receive the said principal money before the expiration of the said terms.

FOR SALE WHERE PART OF PURCHASE-MONEY REMAINS ON MORTGAGE.

8. The said mortgage shall be prepared by the vendor at the expense of the purchaser, and shall be executed by the purchaser immediately after the execution by the vendor of the assurance of the said premises to the purchaser. All the documents of title which but for such mortgage the purchaser would be entitled to have delivered to him upon the completion of the purchase, shall be retained by the vendor as mortgagee, and the transaction shall be treated in all respects as if the purchaser had duly paid the whole of the purchase-money to the vendor upon the completion of the purchase, and the vendor had immediately thereupon repaid the same to the purchaser, by way of loan upon such security as aforesaid.

Mortgage to be executed immediately after completion.

In witness, &c.

No. XVII.

AGREEMENT *for* Sale *to a* Railway Company; Purchase-money *to include* Compensation *for* Severance; Company *to* make *specified* Accommodation Works.

FOR SALE TO RAILWAY COMPANY.

MEMORANDUM OF AGREEMENT made the——day of ——, Between A. B., of, &c. (hereinafter called "the vendor"), of the one part, and C. D., of, &c., and E. F., of, &c., two of the directors of the —— Railway Company, incorporated by the —— Railway Act, 18— (hereinafter called "the company"), of the other part:—

Parties.

1. The vendor agrees to sell, and the company agrees to purchase, the pieces or parcels of land specified in the 1st schedule

Agreement to sell and purchase.

FOR SALE TO RAILWAY COMPANY.

hereto, and the (*g*) mines and minerals (if any) thereunder, and the inheritance thereof in fee simple, for the sum of £——, such sum to be in full satisfaction and compensation for all damage to be sustained by the vendor by reason of the severing of the said lands from his other lands or otherwise injuriously affecting such other lands by the exercise of the powers of the said Act [and to be in full satisfaction also for all accommodation works, except as provided in Article 2 of this agreement (*h*)].

Accommodation works.

[2. THE company shall, as soon as conveniently can be, make and for ever maintain the several works specified in the 2nd schedule hereto for the accommodation of the adjoining lands of the vendor and the owners and occupiers for the time being of the same (*h*)].

Completion of purchase.

3. THE purchase shall be completed on the ——day of ——, at the office of Messrs. ——, the vendor's solicitors, and the company shall from that day be entitled to the possession [*or* receipt of the rents and profits] of the said premises, all outgoings up to that time being cleared by the vendor. If from any cause whatever the purchase shall not be completed on that day, the company shall thenceforth pay to the vendor interest on the said purchase-money after the rate of £ —— per cent. per annum.

Company, if let into possession, to pay interest.

4. IF the vendor shall let the company into possession before the said —— day of ——, the company shall pay interest on the said purchase-money after the rate aforesaid, from the day when they shall be so let into possession.

Delivery of abstract.

5. THE vendor shall, on or before the —— day of ——, deliver to the company, or their solicitor, an abstract of title to the said premises, commencing at such period as the company shall require.

Vendor to execute assurance to the company.

6. UPON the payment of the purchase-money at the time and place aforesaid, the vendor shall execute to the company a proper assurance of the said premises [such assurance to contain proper covenants and provisions for the making and maintaining by the company of the accommodation works specified in the

(*g*) If it is intended that the purchase shall include the mines, they must be expressly mentioned. See Railways Clauses Consolidation Act, 1845, s. 17.

(*h*) In many cases it is unnecessary to make any special stipulation as to accommodation works, the rights of the vendor in this respect being sufficiently protected by the 68th section of the Railways Clauses Consolidation Act, 1845.

2nd schedule hereto, and a counterpart of such conveyance, duly executed by the company shall be retained by the vendor]. FOR SALE TO RAILWAY COMPANY.

7. (*i*) THE costs and expenses, as well of the vendor as of the company, incurred and to be incurred in or about the preparation and execution of this agreement, and the negotiation preparatory hereto (including the charges of the vendor's surveyor for his valuation of the premises), and in or about the preparation and execution of the conveyance, and the counterpart thereof, and of all other documents relating to the assurance of the said premises, and in or about the preparation of the abstract, and the deducing and verifying of the title of the vendor, and all other costs and expenses (if any) which, in the absence of any special agreement, would be payable by the company under the Lands Clauses Consolidation Act, 1845, shall be borne and paid by the company. Costs and expenses to be borne by the company.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

ALL those pieces or parcels of land situate in the parish of —— in the county of ——, containing by admeasurement ——, being parts of several pieces or parcels of land called respectively ——, and numbered ——, as regards the said parish of ——, in the plans and books of reference of the intended railway, deposited with the Clerk of the Peace for the said county, and which pieces or parcels of land, agreed to be sold by the above-written agreement, are delineated and coloured pink in the plan drawn in the margin of the schedule.

[THE SECOND SCHEDULE ABOVE REFERRED TO.

(*To describe the accommodation works.*)]

(*i*) By the Lands Clauses Consolidation Act, 1845, s. 82, all the costs of the conveyance, and of deducing the title, are thrown upon the company, but it is desirable to insert in agreements an express clause as to costs, as it might otherwise be questioned whether the statutory provision was not excluded by implication. Costs thrown on company.

No. XVIII.

FOR SALE TO RAILWAY COMPANY. (*Another Form.*)

AGREEMENT *for* SALE *to a* RAILWAY COMPANY; POWER *to* COMPANY *to take* POSSESSION *before* COMPLETION *upon* DEPOSITING PURCHASE-MONEY.

MEMORANDUM OF AGREEMENT made, &c. (*date and parties, as in last Precedent*).

Parties.

Agreement to sell and purchase.

1. THE vendor agrees to sell and the company agrees to purchase the pieces or parcels of land specified and described in the schedule hereto, at the price of £—— (*k*).

Company to pay additional sum for severance.

2. IN addition to the said purchase-money of £——, the company shall pay to the vendor the sum of £——, as and by way of compensation for all damage to be sustained by him by reason of the severing of the said lands from the other lands of the vendor, and for all other damage or injury to be sustained by such other lands by reason of the formation of the intended railway and the execution of the works connected therewith.

Accommodation works.

And the company shall be bound to make and maintain such works for the accommodation of the adjoining lands of the vendor and the owners and occupiers for the time being of the same, as in the absence of any agreement to the contrary they would be bound to make and maintain under the provisions of the Railways Clauses Consolidation Act, 1845 (*l*).

3. (*For completion of purchase and payment of interest, same as Clause* 3 *of Precedent No. XVII.*)

Company may take possession on depositing purchase-money.

4. IF the company shall be desirous of taking possession of the lands before the actual completion of the purchase, the company shall be entitled so to do, upon depositing the purchase-money in the bank of Messrs. —— at —— in the joint names of the vendor and ——, and in such case the company shall pay interest upon the purchase-money from the time of taking possession until the completion of the purchase after the rate of

(*k*) As mines are not expressly mentioned, they will remain the property of the vendor under this agreement. See Railways Clauses Consolidation Act, 1845, s. 77.

(*l*) See, as to accommodation works, the Railways Clauses Consolidation Act, 1845, ss. 68 to 75.

£—— per cent. per annum, and the money so deposited shall remain in the bank at the risk of the company, who shall be entitled to any interest allowed by the bank thereon. FOR SALE TO RAILWAY COMPANY. (*Another Form.*)

5, 6, 7. (*As in Precedent, No. XVII.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XIX.

AGREEMENT *for* BUILDING GRANT *in fee in* CONSIDERATION *of a perpetual* RENTCHARGE (*m*). FOR BUILDING GRANT.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called "the vendor"), of the one part, and C. D., of, &c. (hereinafter called "the purchaser"), of the other part:— Parties.

1. WHEN and so soon as the architect or surveyor for the time being of the vendor (hereinafter called "the architect") shall have given his written certificate that the dwelling-houses hereinafter agreed to be built are completed and made fit for habitation to his satisfaction, the vendor shall effectually convey all that plot, &c. (*describing it*), to the uses following (that is to say), to the use that the vendor, his heirs and assigns, or a trustee nominated by him for that purpose, his heirs and asigns, may from the —— day of —— receive out of the said premises a perpetual yearly rentcharge of £—— per annum, to be issuing out of and charged upon the same, and payable half-yearly on the —— day of ——, and the —— day of ——, the first half-yearly payment to be made on the —— day of ——; and subject to the said rentcharge and to the statutory powers for enforcing and securing payment thereof to the use of the purchaser in fee simple. Upon certificate of architect that buildings are complete, vendor to execute conveyance. To use that vendor may take a perpetual rent, and subject thereto to purchaser in fee.

(*m*) See observations on grants of this description in the notes to Precedent No. CIV. of Purchase Deeds, *infra*, pp. 339 to 342.

FOR BUILDING GRANT.

2. The purchaser may, immediately after the execution of this agreement, enter upon the said plot of ground, and erect the buildings, and otherwise proceed with the works contemplated by this agreement.

Purchaser may enter and proceed with works.

Purchaser to fence in plot,

and complete villas.

3. The purchaser shall, within one month after obtaining possession of the said plot of ground, fence in the same with good and substantial stone walls on all the sides thereof; and shall before the —— day of ——, 18—, at his expense, under the inspection and to the satisfaction of the architect, build, cover in, and completely finish fit for habitation upon such part of the said plot of ground as is marked out for that purpose in the plan hereto annexed, with good freestone and all proper materials of all sorts, and in a good, substantial, and workmanlike manner, two semi-detached villas or dwelling-houses, with proper offices and outbuildings, according to a plan and elevation to be prepared by the architect, and under his inspection.

Division-fences to be party-walls.

4. Every division or boundary fence separating the said plot of ground from the adjoining plot or plots, shall (when made) be a party-wall, and a proper proportion of the expense thereof shall be paid by the grantees of the adjoining plot, or plots, such proportion to be settled by the architect.

Purchaser to make drains.

5. The purchaser shall make all proper drains and sewers in such manner as shall be approved of by the architect.

As to flues.

6. No flue or substitute for a flue shall be made in the said dwelling-houses, or in any office or building belonging thereto, but such as shall be carried into the chimney-stacks of the said dwelling-houses.

7. All bricks, timber, and other materials, which shall have been brought upon the said premises by the purchaser for the purpose of erecting such buildings as aforesaid, shall be considered as immediately attached to and belonging to the said premises, and shall not be removed without the consent in writing of the vendor or his agent (*n*).

If purchaser make default in building, &c. vendor may re-enter and sell.

8. If the purchaser shall at any time leave the works on the said plot of ground for one calendar month, or shall not complete the said dwelling-houses before the said —— day of ——, 18—, pursuant to Article 3, then it shall be lawful for the

(*n*) These clauses do not render it necessary to register the agreement as a bill of sale. Brown *v.* Bateman, L. R. 2 C. P. 272; Reeves *v.* Barlow, 12 Q. B. D. 436.

vendor or his agent, if he shall think fit so to do, to re-enter upon the said plot of ground and to take possession thereof, and of all buildings and materials whatsoever which may be thereon, and to put an end to the contract (*o*). FOR BUILDING GRANT.

9. When and so soon as the architect shall have given his written certificate that the dwelling-houses agreed to be built are completed and made fit for habitation to his satisfaction, the purchaser will accept a conveyance of the said plot of ground and the buildings erected thereon upon the terms herein mentioned, and will execute a duplicate or counterpart thereof. Purchaser to accept conveyance.

10. The conveyance shall contain the following covenants by the purchaser (that is to say): to pay the yearly rent; to repair and keep the said dwelling-houses and buildings, and the boundary walls and drains belonging thereto, in good and tenantable repair and condition, and to permit the vendor, his heirs or assigns, and all persons authorized by him or them once in every year in the day time on giving to the tenant or occupier for the time being of the said dwelling-houses respectively one week's notice of his or their intention so to do, to enter the said dwelling-houses, buildings, and premises respectively to examine the condition thereof; and also at all times to insure and keep insured against loss or damage by fire the said dwelling-houses and buildings in the —— office, or some other public insurance office, in the sum of £—— at least, and on demand to produce to the vendor, his heirs or assigns, the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and, whenever any loss or damage by fire shall happen to the said dwelling-houses and buildings, or any part thereof, forthwith to expend the money received under such insurance as aforesaid, and also such other moneys as shall be necessary for the purpose, in rebuilding or reinstating the premises; and also not to alter or permit to be altered the external plan or elevation of the said dwelling-houses and buildings respectively without the previous consent of the vendor, his heirs or assigns; and also not at any time without such consent as aforesaid to carry on or permit to be carried on upon the said premises any trade or business what- Conveyance to contain covenants by grantee to pay rent and taxes. To repair. To insure. Not to carry on any trade or use premises except as private dwelling-

(*o*) See note (*n*), previous page.

FOR BUILDING GRANT.

soever, or use or permit to be used the same for any other purpose than as private dwelling-houses; nor without such consent to erect on the said plot of land any other messuage or building than the dwelling-houses and buildings so to be erected as aforesaid, except a stable or coach-house or green-houses or conservatories in connection with the said dwelling-houses respectively.

houses, without vendor's consent.

Not to erect other buildings without grantor's consent.

Conveyance to contain powers for securing performance of covenants as to repairs, &c.

11. The conveyance shall also contain a power (limited so as not to infringe the rule against perpetuities), enabling the vendor, his heirs or assigns, as owner or owners for the time being of the rent, in case any dwelling-house or buildings shall be destroyed or damaged by fire or shall fall into disrepair, and the purchaser, his heirs or assigns, shall fail to rebuild or repair the same for the space of three calendar months after a notice requiring him or them so to do shall have been given to him or them or left at or upon the premises, to enter into and upon the said premises, and to rebuild or repair the said house or buildings, as the case may require, and to remain upon the premises and to receive the rents and profits thereof, until all moneys expended in such rebuilding or repairs, and all costs and expenses incurred in or about the exercise of such power, shall thereby or otherwise be fully paid or discharged.

Conveyance, by whom and at whose cost to be prepared.

12. The said conveyance, and the counterpart thereof, shall be prepared by Mr. ——, and shall be at the cost of the purchaser.

Vendor's title accepted.

13. The purchaser has examined the vendor's title, and is satisfied therewith, and he hereby accepts the same.

In witness, &c.

No. XX.

AGREEMENT *to procure* LETTERS PATENT, *and to* SELL *a* MOIETY *of the* INVENTION *and the* BENEFIT *thereof* (*p*). AS TO LETTERS PATENT.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part. WHEREAS the vendor hath recently discovered certain improvements in ——, and intends forthwith to apply for Her Majesty's Letters Patent for special licence and privilege to make, use, exercise, and vend the invention for his use, for the term of —— years. Parties. Recite discovery of invention.

1. THE said A. B. (hereinafter called the vendor) shall sell, and the said C. D. (hereinafter called the purchaser) shall purchase, one moiety or equal half part or share of and in the said invention, and all improvements whatsoever which the vendor shall hereafter make or discover therein, and of and in all letters patent which the vendor shall obtain in respect of such invention and improvements, and all advantages incident to or to be derived from the same, for all the term for which such letters patent shall be granted, and for such renewed and additional term or terms as shall hereafter be granted therein, at the price of £——. Agreement to sell and purchase one moiety of the invention.

2. THE vendor shall, within —— days next after the date of this agreement, apply for the said letters patent, and shall follow up such application by all proceedings and means necessary and usual in such cases, so that the letters patent may be obtained as soon as possible, and the vendor shall pay all fees and expenses attendant on obtaining the said letters patent. Vendor to obtain letters patent.

3. WITHIN —— days after such letters patent shall be granted, the purchaser shall pay to the vendor the said purchase-money, and the vendor shall execute to the purchaser an assignment of the said moiety, such assignment to be prepared by and at the expense of the purchaser, and to be left by him at the office of Mr. ——, for execution by the vendor; and the As to completion of purchase.

(*p*) See 46 & 47 Vict. c. 57.

AS TO LETTERS PATENT.

said assignment shall contain (amongst other things) a covenant on the part of the vendor not to do, or assent to, or cause to be done or assented to, any act, deed, matter, or thing, whereby the said letters patent shall be forfeited or invalidated, or the right of the purchaser to his share thereof be affected, and a provision that the business of the said letters patent shall be managed and conducted by the vendor, and that he shall keep regular accounts of the same, and that such accounts shall be at all times open to the inspection and examination of the purchaser, who shall have full power to take copies of or extracts from the same.

Agreement to be voidable in a certain case.

4. If the said letters patent shall not be obtained before the —— day of —— next, this agreement shall be voidable by the purchaser.

In witness, &c.

ABSTRACTS, SEARCHES, AND PURCHASE-DEEDS.

Preface.

When a binding contract for the sale of lands has been entered into, whether upon a public auction, or a private sale, the next step in the transaction is for the vendor to furnish to the purchaser an abstract of title, and to verify such abstract. If the purchaser is satisfied with the title as disclosed by the abstract, he makes, or directs to be made, the proper searches for registered documents and incumbrances in the proper office or offices, and if the result of this search is also satisfactory, the sale is carried into effect by a deed of conveyance, and by payment of the purchase-money. It is deemed convenient to introduce in this place three Dissertations:—I. On Abstracts and their verification; II. On Searches; and III. On Purchase Deeds and instruments relating to the sale and purchase of land.

ABSTRACTS AND THEIR VERIFICATION.

Commencement of title.

Unless the conditions or agreement for sale stipulate to the contrary, the title, on the sale of freeholds or copyholds, must be deduced for a period of forty years, that period having been substituted for sixty years by the Vendor and Purchaser Act, 1874. And in cases where an earlier title than

sixty years might have been required under the former practice, an earlier title than forty years may now be required (*p*).

What a good root of title.

A purchase-deed, or marriage settlement, is a good instrument with which to commence the abstract. If the title commences with a general devise contained in the will of a person who died forty years since, then, in the absence of any stipulation to the contrary, proof by old leases, declarations, receipts of rent, parish books, &c., should be supplied that he was in possession of the estate, or in the receipt of the rents and profits thereof, at the time of his decease. If the abstract commences with an appointment, the purchaser was until the recent Act entitled to have the instrument creating the power abstracted, but it is now provided by the Conveyancing Act, 1881, that in such case the deed creating the power need not be abstracted (*q*). It is apprehended that, notwithstanding the recent Act, an admission to copyholds is not a proper commencement of title without the surrender on which the admission is grounded. In a word, it is necessary that, subject to the statutory conditions, the title should be properly commenced, and satisfactorily deduced as to the legal as well as the equitable estate, the abstract showing that the vendor is entitled to the lands and the inheritance thereof in fee simple in possession, free from all incumbrances, except such as can be satisfied.

Admission to copyholds should be preceded by surrender.

As to right of purchaser to inspect ancient deeds.

It is clear that under the recent Act a purchaser is not entitled before completion to the production and inspection of deeds, whether in the vendor's possession or not, of earlier date than the deed forming the stipulated root of title, though he will be entitled to have them handed over to him on completion, if they relate to no other property.

Inquiry as to existing leases.

If the property is subject to any existing leases, the vendor should allow the purchaser to inspect the counterparts, so that it may be seen that they contain

(*p*) Vendor and Purchaser Act, s. 1.
(*q*) Sect. 3, sub-sect. 3.

no special provision in favour of the lessee—as, for instance, a right of pre-emption—and that the lessor has entered into no covenant which could prove a burthen on the estate in the hands of the purchaser.

What abstract should state.

From the document which commences the title every deed, instrument, incumbrance, and fact, relating to, or affecting the title, should be stated in the abstract, except leases which have expired by effluxion of time. Thus, a mortgage deed must be abstracted although the money may have been repaid, and the property has been reconveyed.

Equitable mortgages.

Where there has been a mere equitable mortgage, which has been discharged, or is intended to be discharged, before completion, it is usual not to mention it in the abstract, and Mr. Dart approves of and defends the practice (*r*), notwithstanding the opinion to the contrary of Vice-Chancellor Wood (*s*).

Deeds not affecting right to sell need not be abstracted.

Deeds which do not affect and never have affected the right to sell or dispose of the property, although they may confer some beneficial interest in it, need not, it is conceived, be abstracted. Thus where a mortgage is made to persons by one deed, and by another it is declared that the mortgagees are trustees for others, the latter need not be abstracted.

Trustee for sale need not abstract deed containing trusts of sale moneys.

If land has been conveyed by or to a trustee upon an absolute trust for sale, and the trusts of the sale moneys are declared by a separate deed, there will be no occasion to abstract the deed declaring the trusts of the moneys, unless an order has been made by the Court under section 7 of the Settled Land Act, 1884, giving leave to some person beneficially interested under the latter deed to exercise the powers conferred by sect. 63 of the Act of 1882. Until such an order is made the trustees may exercise the trusts and powers created by the deed of conveyance to them, without any consent not required by that deed (*t*).

Judgments, &c.

Any judgments, crown debts, executions, extents, or *lis pendens* which affect the property, should be mentioned in the abstract.

(*r*) Dart, p. 343, 6th edition. 608.
(*s*) Drummond *v.* Tracey, Johns.
(*t*) Act of 1884, s. 6.

What purchaser should do.

The purchaser, or his solicitor, is entitled and should not omit to examine the abstract with the deeds, wills, and other instruments relating to the title, or with attested or official copies of them.

As to settlements made in pursuance of articles.

Articles before marriage, in pursuance of which settlements have been made, should be abstracted as well as the settlements themselves, to show that the articles were duly carried into effect.

Births, &c., proved by certificates.

When it is necessary to show the birth, death (*t*), or marriage of any person, the fact must be proved either by a recital or statement contained in some deed, instrument, Act of Parliament, or statutory declaration, dated twenty years before the date of the contract (*u*), or by a certificate obtained from the proper registers (*x*). Certified extracts from non-parochial registers, which, under the 3 & 4 Vict. c. 92, are deposited with the Registrar-General, are now made evidence by that Act (*y*).

On claim by descent.

When the title, or any portion of it, depends on a claim by descent, the facts supporting the pedigree must be proved, either by recitals or statements in deeds, &c., twenty years old (*z*), or by the strict legal evidence of such facts, if it can be procured. If not, extracts from parish books, family Bibles, old books or papers, inscriptions on tomb-stones, or the declarations of old persons, will often be admissible as proof.

Proof of failure of issue.

When prior estates are alleged not to have vested for default or failure of issue, the same proof of want of issue must be shown as is required to verify a pedigree.

Presumption of death.

(*t*) If a person has not been heard of for seven years, his death will be presumed; but it is a matter of evidence, not of presumption, at what time within that period he died, and the onus of proving it lies on the person who claims a right, to the establishment of which that fact is essential. *In re* Phené's Trusts, L. R. 5 C. A. 139; *In re* Lewes' Trusts, L. R. 6 C. A. 356; *In re* Beasney's Trust, L. R. 7 Eq. 498; Doe *v.* Nepean, 5 B. & Ad. 86; Hickman *v.* Upsall, 4 C. D. 144; *In re* Corbishley's Trusts, 14 C. D. 846.

(*u*) Vendor and Purchaser Act, 1874, s. 2, rule 2.

(*x*) See 6 & 7 Wm. 4, c. 86; 1 Vict. c. 22; 16 & 17 Vict. c. 134.

(*y*) Sect. 9.

(*z*) Vendor and Purchaser Act, 1874, s. 2, rule 2.

Proof of wills.

In the case of wills, the abstract is verified by production of the probate, or an office copy, which is now sufficient evidence as to real as well as personal estate (*a*).

Execution of deeds, &c.

It must be seen that every document has been properly executed and attested, and that the proper stamps have been affixed. Where enrolment, registration, or acknowledgment is necessary, it must be ascertained that the documents have been properly enrolled, registered, or acknowledged, according to the provisions of the statutes making these formalities necessary.

Receipt for consideration.

When the consideration is money paid at the time, it must be seen that a receipt is indorsed on the deed if dated before the 1st of January, 1882, but as to a deed dated on or after that day it is sufficient if the receipt is contained in the body of the deed *or* indorsed on it (*b*).

Outstanding interests.

It should be seen that there is no outstanding interest such as dower, free-bench, curtesy, or any other unsatisfied charge. Although more than twelve years may have elapsed since legacies and sums charged on the land became payable, receipts or a release must be obtained from the person entitled to those charges, as the claims on their account may still be subsisting by infancy, or other disability, or by some intermediate acknowledgment (*c*).

As to due execution of powers.

When powers have been executed it must be ascertained that the needful formalities have been observed. If, for instance, the power is to be executed by a deed, "signed, sealed, and delivered in the presence of and attested by two credible witnesses," it should be seen that the attestation clause expresses all this to have been done (*d*).

(*a*) See the Probate Act, 20 & 21 Vict. c. 77, s. 64.

(*b*) See Conveyancing Act, 1881, ss. 54, 55.

(*c*) Shields *v.* Rice, 3 Jur. 950; Cooke *v.* Soltau, 2 Sim. & Stu. 154; 37 & 38 Vict. c. 57, s. 8.

(*d*) See Wright *v.* Wakeford, 17 Ves. 454. Notwithstanding the observations on this case in Vincent *v.* Bishop of Sodor and Man, 4 De G. & Sm. 294; and *Re* Rickett's Trusts, 1 J. & H. 70, it must still be regarded as an authority for the precise point decided by it. See also Burdett *v.* Spilsbury, 10 Cl. & Fin. 340.

22 & 23 Vict. c. 35, s. 12.

The 12th section of the 22 & 23 Vict. c. 35, provides that a deed thereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power by deed or instrument not testamentary, notwithstanding that such deed or instrument may require some additional or other forms of execution or attestation, but not so as to defeat any direction in the instrument creating the power that the consent of any person shall be necessary to a valid execution. As the ordinary form of attestation of deeds is "signed, sealed, and delivered," &c., it would seem that where the power requires all these formalities, it might be made a ground of objection that either of them is omitted from the attestation clause.

Execution and attestation of testamentary appointments.

With regard to wills, however, it is provided by the Wills Act that a will executed as required by the Act shall, as far as respects the execution and attestation thereof, be a valid execution of a power notwithstanding that some additional or other form or solemnity should be required by the instrument creating the power (*e*).

Inquiry as to settlements.

It may sometimes also be desirable to inquire, whether any settlement affecting the estate has been executed which has not been noticed in the abstract; but in all these cases the expediency of making such inquiries must depend upon the particular condition of the title, and the circumstances or suspicions which it suggests.

Proceedings in insolvency and bankruptcy.

If any portion of the title depends on proceedings in bankruptcy, the abstract must be verified by the production of certified copies of such proceedings.

Identity.

When the description of the parcels has been altered, or they are not sufficiently described in the deeds, proof of identity by leases, parish assessments, receipts for rent, declarations, or other evidence, should be supplied.

(*e*) Sect. 10.

As to deeds which require to be enrolled, they are proved by production of examined copies of the originals; but if the originals are in the custody of the vendor, the purchaser would be entitled to their production. Proof of enrolled deeds.

If the property is sold discharged from land-tax, the redemption of the land-tax is shown by the certificate of the Commissioners, with the receipt of the cashier of the Bank of England, and memorandum of registration (*f*). Land-tax.

When a person seised or entitled is stated to have died intestate, the letters of administration taken out to his estate should be produced. If the deceased owner had made a will, but died intestate as to the particular property, the will should be mentioned in the abstract, with a statement that it contains no devise or bequest of the land in question. Proof of intestacy.

When the title-deeds are lost or destroyed, the vendor must prove the fact of the loss or destruction, and must also furnish the purchaser with the means of showing what were the contents of the destroyed deeds, and of proving that such deeds were duly executed (*g*). Evidence when title-deeds are destroyed.

If any deed was executed by attorney, the power or letter should be produced, and (except in cases coming within the enactment referred to in the next paragraph) proof should be given that the principal was living at the time when the attorney executed. Execution of deed by attorney.

If, however, the power of attorney is created by an instrument executed after the 31st December, 1882, and is given for a valuable consideration, and in the instrument creating the power it is expressed to be irrevocable, it is provided by the Conveyancing Act, As to powers of attorney executed after 31st December, 1882.

(*f*) 42 Geo. 3, c. 116, s. 38; Buchanan *v.* Poppleton, 4 Jur. N. S. 414. Land-tax redeemed under 38 Geo. 3, c. 60, or under 42 Geo. 3, c. 116, is personal estate, but a fee-farm rent in lieu of land-tax purchased under the last-mentioned Act is real estate. The 16 & 17 Vict. c. 117, s. 2, provided for the merger of all land-tax redeemed under any contract entered into after the 20th August, 1853, but this section was repealed by sect. 3 of the 19 & 20 Vict. c. 80, as to contracts entered into after the 29th July, 1856.

(*g*) Bryant *v.* Busk, 4 Rus. 1.

1882, s. 8, that such a power in favour of a purchaser (*h*) shall not be revoked at any time, either by anything done by the donor of the power, or by his death, marriage, lunacy, unsoundness of mind, or bankruptcy; and, by sect. 9, it is provided that if a power of attorney created as aforesaid, whether given for a valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time not exceeding one year from the date of the instrument, then, in favour of a purchaser, the power shall not be revoked for that fixed period. It follows that whenever a deed is abstracted which was executed by an attorney under any such power, the production of the power is sufficient, as it will be immaterial whether the donor is living or not.

Title to leaseholds.

When the property is leasehold, the original lease and all the subsequent assignments should generally be abstracted; but if the property is held under a very ancient lease, it is sufficient to commence the abstract with the original lease (*i*), and then to take up the title at a period of forty years from the time of the purchase. It has been seen that, in the absence of stipulation, the purchaser is precluded by the new statutory rules from calling for the lessor's title (*k*).

When the estate has been specifically bequeathed, and the sale is made by the specific legatee, proof must be given of the assent of the executor to the bequest.

As to renewable leaseholds.

On the sale of renewable leaseholds, where the lease is expressed to have been granted in consideration of the surrender of a prior lease, the vendor must show the title to the surrendered lease (*l*), in the absence of any stipulation to the contrary.

Copyholds.

As to copyholds, the abstract should contain a copy of the entries on the Court Rolls relating to the estate, accompanied by the necessary instruments, facts, and proofs, to show the equitable title; and the title is

(*h*) Who by the interpretation clause includes a mortgagee or lessee.

(*i*) Frend *v.* Buckley, L. R. 5 Q. B. 243.

(*k*) *Supra*, p. 17.

(*l*) Hodgkinson *v.* Cooper, 9 Beav. 304.

proved and verified by the production of copies of the Court Rolls. Where an owner dies seised, proof must be given that he did not leave a wife entitled to free-bench.

Satisfaction of conditional surrender.

When a conditional surrender has been made to a mortgagee, and he has not been admitted, it should be shown that satisfaction has been entered up.

On the purchase of copyholds, inquiry should be made as to the customs of the manor, especially as to descent, free-bench, fines, heriots, rents, &c.; and the purchaser should search the Court Rolls of the manor.

As to Crown lands and rectories impropriate.

In an abstract of title to lands granted by the Crown, or a rectory impropriate, the original grant must precede the deduction of the modern title, so as to show that it was a grant in fee, that no rent was reserved, and that there is no remainder or reversion in the Crown. The title from the original grantee to the commencement of the modern title need not be produced.

As to advowsons.

The title to advowsons must be traced for three entire incumbencies if the times of such incumbencies shall together amount to or exceed the full period of forty years; but if the times of such incumbencies do not together amount to forty years, then for such further time as with the times of such incumbencies will make up that period; and the purchaser must be furnished with a list of the presentations which have taken place within the required period. But no advowson can be recovered after the expiration of one hundred years, from the time at which a clerk has obtained possession of the benefice adversely, so that the title need never be carried back beyond one hundred years, although there may not have been three entire incumbencies within that time (*m*).

Evidence of private Act.

When the title is derived under a private Act of Parliament, a Queen's Printer's copy of the Act should be provided (*n*); but if the vendor has no

(*m*) 3 & 4 Wm. 4, c. 27, ss. 30, 32. Vendor and Purchaser Act, 1874, s. 2. The term "land" includes incorporeal hereditaments, and therefore (it is assumed) an advowson.

(*n*) See 8 & 9 Vict. c. 113, s. 3.

such copy in his possession the purchaser must pay for it (*o*).

As to allotment.

In purchasing an allotment, it should be ascertained that the allotment was authorized by the Act.

As to encroachments.

As to enclosures or encroachments made by a tenant, they will generally, as between him and his landlord, be the property of the latter, unless it can be proved that the tenant at the time intended the encroachment for his own benefit, and not to hold it as he held the estate of which he was tenant (*p*).

Strips of land by a public road.

As to open strips of land, which are next a public road, the legal presumption is that they belong to the owner of the adjoining enclosed land, and not to the lord of the manor (*q*).

As to life or reversionary interests in trust funds.

On the sale of life or reversionary interests in trust funds, the document creating the trust must be abstracted, and all the clauses therein which relate to, or can in any respect affect, the property must be fully set out. If there are any other deeds which relate to the fund, they also must be abstracted, including any deeds by which new trustees have been appointed; and the purchaser will be entitled at his own expense to attested copies and a covenant for, or, under the new Act, an acknowledgment of his right to the production of such deeds and documents, in the absence of express stipulation to the contrary. The purchaser must ascertain the actual condition and position of the fund at the time of sale, and carefully examine the provisions of the document containing the trust, in order to be satisfied that there is no provision or power under which the *corpus* of the fund may be diminished or otherwise affected.

As to life policies.

On the purchase of life policies, the purchaser, in the absence of a stipulation to the contrary, should be supplied with proof of the correctness of the statements on which the policy was granted, and that the

(*o*) Conveyancing Act, 1881, s. 3, sub-s. 6.

(*p*) Doe *d.* Mostyn *v.* Jones, 15 M. & W. 580; Andrews *v.* Hailes, 2 El. & Bl. 349; Doe *d.* Croft *v.* Tidbury, 14 C. B. 304, 325.

(*q*) Doe *v.* Pearsey, 7 B. & C. 304; Dendy *v.* Simpson, 18 C. B. 831.

last premium has been paid; and if the policy was effected on the life of any other person than that of the assurer it will be necessary to ascertain that the assurer had at the time a pecuniary interest in the life of the assured.

Custody of abstract.

The purchaser is entitled to the custody of the abstract until either the purchase is finally rescinded by consent, or declared impracticable by the Court (*r*); and if the sale proceeds, the abstract is the property of the vendee.

Succession duty.

Where land has devolved upon any person by the death of another, the vendor must produce a receipt or certificate of the payment of the succession duty, unless the liability of the purchaser is barred by sect. 12 of the Customs and Inland Revenue Act, 1889. This section provides that real property shall not, as against a purchaser for valuable consideration or a mortgagee, remain charged with or be liable to payment of any sum for succession duty after the expiration of six years after the date of such notice or payment as therein mentioned, or in the absence of such notice or payment, after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to such duty, or if such period expires within six years from the passing of the Act, then after the expiration of six years from that date. And if the sale is made by a tenant for life and remainderman, the purchaser, unless precluded by an express stipulation, should require the succession duty, which will become payable on the death of the tenant for life, to be commuted, under sect. 41 of the Act, unless he is willing to accept an indemnity against such duty, or an abatement from his purchase-money in respect thereof.

Penalty for concealing deeds.

A seller or mortgagor of land, or of any chattels real or personal, or choses in action, conveyed or assigned to a purchaser, or the solicitor or agent of any such seller or mortgagor, who conceals any settlement, deed, will, or other instrument material to the

(*r*) Roberts *v.* Wyatt, 2 Taunt. 268.

title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, is guilty of a misdemeanor (*s*).

What inquiries vendor may refuse to answer.

Neither a vendor nor his solicitor can be required to answer an inquiry by the purchaser, whether the vendor or his solicitor is aware of any settlement, deed, fact, omission, or incumbrance, affecting the property not disclosed by the abstract (*t*).

SEARCHES FOR REGISTERED DOCUMENTS AND INCUMBRANCES.

Provision in certain cases for registration.

It has been already stated that the abstract to be furnished by the vendor should mention all the documents and incumbrances affecting the property sold. But in some instances the legislature has provided for the enrolment and registration of documents and incumbrances, for the better protection of purchasers and mortgagees.

Middlesex and old Yorkshire Registries.

Middlesex Registry Act.

By the Middlesex Registry Act, 1708 (*u*), s. 1, it is enacted that a memorial of all deeds and conveyances and of all wills and devises in writing, of or concerning or whereby any houses, manors, lands, tenements, or hereditaments in the county of Middlesex may be in any way affected in law or equity, may be registered as therein directed, and that every such deed and conveyance shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration unless such memorial thereof shall be registered as by the Act is directed before the registering of the memorial of

(*s*) 22 & 23 Vict. c. 35, s. 24; 23 & 24 Vict. c. 38, s. 8.

(*t*) *In re* Ford and Hill, 10 C. D. 365.

(*u*) 7 Anne, c. 20.

the deed or conveyance under which such subsequent purchaser or mortgagee shall claim, and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee unless a memorial of such will be registered in such manner as is therein directed. The 8th section provides that all memorials of wills that shall be registered within six months after the death of devisors dying in Great Britain, or within three years after the death of devisors dying on the sea or beyond the seas, shall be valid against subsequent purchasers, and sect. 9 extends the time in certain cases. The Acts 2 & 3 Anne, c. 4, 6 Anne, c. 35, and 8 Geo. II. c. 6, contain similar provisions as to the registration of assurances, &c. of land in Yorkshire. These Yorkshire Acts have been repealed as from the 1st January, 1885, but their provisions remain applicable to assurances made, and wills of persons dying, before that date (*x*).

Yorkshire Registry Acts.

The above Acts do not extend to copyholds, leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation go along with the lease, or to the city of London, or to any of the chambers in Serjeants' Inn, or to the Inns of Court or Chancery.

To what property Registry Acts do not extend.

The following points have been decided under the above Acts, viz. (1) That a deed of appointment under a power must be registered (*y*). (2) That the memorial of an assignment of leaseholds will not, by containing a recital of the lease, cure the omission to register the lease (*z*). (3) That an assignment of a legacy charged on land (*a*), or of the proceeds of land devised on trust for sale (*b*), is an assignment of money only, so that such an assignment need not be registered. (4) That an equitable mortgage by agreement in writing, either with or without a deposit of deeds,

Appointment must be registered.

Assignment of legacy charged on land need not be registered.

Equitable mortgage.

(*x*) 47 & 48 Vict. c. 54, ss. 4, 51.
(*y*) Scrafton *v.* Quincey, 2 Ves. sen. 413.
(*z*) Honycomb *v.* Waldron, 2 Str. 1064.
(*a*) Malcolm *v.* Charlesworth, 1 Keen, 63.
(*b*) Arden *v.* Arden, 29 C. D. 702.

Further charge.

Enfranchisement of copyholds must be registered.

Equitable mortgage by deposit only and lien for unpaid purchase-money where no memorandum.

Registration of deed not notice.

requires registration (*c*), and so does a further charge in favour of a mortgagee who has registered his first mortgage (*d*). (5) That an enfranchisement of copyholds must be registered (*e*). (6) That registration is not requisite as to any interest in land not created by writing, *e. g.*, an equitable mortgage by deposit only or a vendor's lien for unpaid purchase-money, where there is no memorandum (*f*). (7) That a purchaser who buys with actual notice of an unregistered deed, is bound by it (*g*). (8) That the registration of a deed is not of itself notice. If, however, a man searches the register he will be deemed to have notice, unless he only searched for a particular period, in which case he will not be deemed to have notice of a deed registered before the commencement of that period (*h*).

Land registered under Act of 1875 exempt.

Land registered under the Land Registry Act, 1862, or the Land Transfer Act, 1875, is exempt from registration under the Middlesex or Yorkshire Registry Acts.

Middlesex Registry transferred to office of Land Registry.

By the Land Registry (Middlesex) Act, 1891 (*i*), the Middlesex Registry is transferred to the office of Land Registry, established under the Land Transfer Act, 1875, as from the 1st April, 1892, and the practice as to registration and as to searches in the register is regulated partly by regulations prescribed in a schedule to the Act, and partly by the Land Registry (Middlesex Deeds) Rules, 1892.

New rules.

The Rules as to searches are as follows:—

9. An ordinary search shall be a search made against one name on one day by a person not an officer of the Registry, in any of the indexes, books, or documents open to public inspection. The requisition for a search shall state the nature of the search, and the name against which it is to be made, and shall bear Land Registry stamps for the fee and be signed by the applicant.

(*c*) Moore *v.* Culverhouse, 27 Beav. 639.

(*d*) Credland *v.* Potter, L. R. 10 Ch. 8; Neve *v.* Pennell, 2 H. & M. 170; Wight's Mortgage Trust, L. R. 16 Eq. 41.

(*e*) Regina *v.* Lord Truro, 21 Q. B. D. 555.

(*f*) Sumpter *v.* Cooper, 2 B. & Ad. 223; Kettlewell *v.* Watson, 26 C. D. 501.

(*g*) Le Neve *v.* Le Neve, 3 Atk. 646, 655; Wyatt *v.* Barwell, 19 Ves. 435.

(*h*) Sug. V. & P. 625; Hodgson *v.* Dean, 2 Sim. & Stu. 221.

(*i*) 54 & 55 Vict. c. 64.

10. An official search shall be a search made by an officer of the Registry, in the index only, for certain specified years, for all entries therein, against one name, affecting lands in a specified parish.

11. The requisition for an official search shall state the surname and christian name of the person against whom it is to be made, the parish, the years over which it is to extend, and the day on which the certificate is required, not being less than six clear days from the leaving of the requisition in the office. The requisition shall be signed by the applicant, and shall bear Land Registry stamps for the amount of the fee.

12. An official certificate of the result of every official search shall be issued from the Registry to the applicant, and a copy, or other sufficient record of the same, shall be kept in the office.

13. Applications for official searches shall be subject to the following provisions:—

(*a.*) That the search shall not be such as for any sufficient reason shall appear to be impracticable to complete.

(*b.*) That the Lord Chancellor may make regulations limiting or extending the period to be covered by official searches.

14. Where a person obtains an official certificate of search he shall not be answerable in respect of any loss that may arise from error therein. Where the certificate is obtained by a solicitor acting for trustees, executors, or other persons in a fiduciary position those persons also shall not be so answerable.

And the following forms are directed to be used with reference to searches:—

REQUISITION FOR AN ORDINARY SEARCH.

Land Registry. Middlesex Deeds Acts.

I desire to make a search against the following name(s):—

Surname.	Christian Name.

(*Signature of Applicant.*)
(*Address.*)
(*Date.*)

Requisition for an Official Search.

Land Registry. Middlesex Deeds Acts.

I require an official search to be made in the index for the years to inclusive, for all entries appearing therefrom to affect lands in the parish(es) of entered against the following name:—

Surname.	Christian Name.

The certificate will be required to be ready [*or* to be sent by post] on the of next.

(If the certificate is to be sent by post, a stamped and addressed envelope must be left with the requisition.)

(*Applicant's signature.*)
(*Address.*)
(*Date.*)

Official Certificate of Search.

Land Registry. Middlesex Deeds Acts.

This is to certify that the subjoined list contains all the entries in the index for the years to inclusive, appearing therefrom to affect lands in the parish(es) of entered against the following name:—

Surname.	Christian Name.

To wait till called for by [*or*, to be sent by post to] of .

List of Entries.

Year.	Book.	No.	Year.	Book.	No.	Year.	Book.	No.

The fee for an ordinary search is 2*s.* per name, and for an official search 7*s.* 6*d.* for ten years or less, and

2*s.* 6*d.* for every further five years or less, and if more entries are found than at the rate of ten for every five years, then for every five or part of five extra entries an additional fee of 1*s.* is charged.

The Act of 1891 provides that no memorial of a judgment need be registered under the Act of 1708 (*l*). Memorials of judgments abolished.

New Yorkshire Registry.

The Yorkshire Registries Act, 1884 (*m*), which came into operation on the 1st January, 1885, repeals the former Acts. The following is a summary of the principal provisions of the Act of 1884, as amended by the Yorkshire Registries Amendment Act, 1885. Principal provisions of Yorkshire Registries Acts.

1. Assurances made, and the wills of testators dying, after the commencement of the Act, by which lands in Yorkshire are affected, may be registered (*n*). Assurances and wills to be registered

2. Registration may be by enrolling in the register a memorial, or, at the option of the person registering, a full copy of the assurance or will (*o*). Mode of registration.

3. Assurance includes any conveyance, enlargement of term into fee simple, memorandum of charge, deed of consent to the discharge of a trustee, statutory receipt, private Act of Parliament, award or order of the Land Commissioners (*oo*), order of a court, certificate of appointment of trustee in bankruptcy, or affidavit of vesting under any Act of Parliament (*p*). Definition of "assurance."

4. A caveat may be registered by any person claiming an interest in land, to be in force for the period specified therein; and if within that period a conveyance is executed and registered in favour of the person registering the caveat, it will be deemed to have been registered on the day on which the caveat was registered (*q*). Caveats may be registered.

5. Every assurance is to have priority according to the date of registration, and every will according to the date of the testator's death, if the date of registration is within six months after the death, but if not, Assurances to rank according to date of registration. Wills according to date of

(*l*) Sect. 6.
(*m*) 47 & 48 Vict. c. 54.
(*n*) Sect. 4.
(*o*) Sect. 5.
(*oo*) Now the Board of Agriculture.
(*p*) Sect. 3.
(*q*) Sect. 10.

death, if registered within six months; if not, according to date of registration.

Priority not affected by notice.

then according to the date of registration. This priority is to have full effect, except in cases of actual fraud, and no person claiming under a registered instrument is to lose priority merely in consequence of his having been affected with actual or constructive notice, except in cases of actual fraud. But this provision is not to confer on a person claiming without valuable consideration any further priority than would belong to the person under whom he claims (*r*).

Notice of will may be registered in certain cases, and will itself registered afterwards.

6. If a person interested under a will cannot register it within six months after the testator's death, he may register a notice of it, and in that case, if the will is duly registered within two years after the death of the testator, it will have priority as though it had been registered upon the date on which the notice was registered, and such last-mentioned date is for all purposes to be deemed to be the date of the registration of the will (*s*).

Heir may register affidavit of intestacy.

7. An heir may register an affidavit that he believes his ancestor to have died intestate, and in that case an assurance for valuable consideration by the heir duly registered is to have priority over any will of the supposed intestate, registered after the assurance, and after six months from the testator's death (*t*).

Lien for unpaid purchase-money, and charge by deposit of deeds, to be registered.

8 A lien for unpaid purchase-money, or a charge by deposit of title deeds, will have no priority against a subsequently registered assurance for valuable consideration, unless and until a memorandum thereof is registered (*u*).

Official searches.

9. Provision is made for official searches, and a record of the result of every such search is to be preserved at the office, and the registrar is to give a certificate of such result to any person requiring the same, and every such certificate is to be receivable in evidence (*x*).

Searches may be made and copies taken by any person.

10. Any person is authorized on application to inspect and search the register and any other books

(*r*) Sect. 14.
(*s*) Sect. 11.
(*t*) Sect. 12.
(*u*) Sect. 7.
(*x*) Sects. 20, 21.

and indexes which may be required to be kept at the register office under the Act or any rules made thereunder, and to take copies thereof or extracts therefrom (*y*).

Protection of solicitors, trustees, &c., in the case of certificates, &c.

11. Where any solicitor, trustee, executor, agent, or other person in a fiduciary position, either by himself or by a solicitor, obtains a certificate of the result of an official search, or a certified copy of any document enrolled in the register, or of any entry therein or any book or index kept at the office, he is not to be answerable for any loss, damage, or injury arising from any error therein (*z*).

Protection by legal estate and tacking not to be allowed.

12. In any case in which priority or protection might, but for the Act, have been given or allowed to any estate in lands by reason of such estate being protected by or tacked to any legal or other estate, no such priority or protection is in future to be so given or allowed, and full effect is to be given to this provision, although the party claiming such priority or protection may be a purchaser for valuable consideration without notice (*a*).

Exemption of copyholds, &c.

13. The Act does not apply to copyholds or to any lease not exceeding twenty-one years, or any assignment thereof where accompanied by actual possession from the making of such lease or assignment (*b*).

Rules under the Yorkshire Registries Act.

The practice as to registration and enrolment of instruments and as to searches for registered or enrolled instruments under this Act is regulated by rules passed by the Justices of the Peace for the several Ridings at Quarter Sessions (*c*). These rules provide (among other things) that every requisition for an official search for any registered or enrolled instrument shall be signed by or on behalf of the person requiring the search, and that the registrar shall cause a certificate of the result of the search to be given to the person requiring the same. The fee for an ordi-

(*y*) Sect. 19.
(*z*) Sect. 23.
(*a*) Sect. 16.
(*b*) Sect. 28.

(*c*) See the North Riding of Yorkshire Registry Rules, 1885. Those passed for the East and West Ridings are identical, *mutatis mutandis*.

nary search is 1*s.* in any one name for any period not exceeding ten years, and 6*d.* for every additional period of five years. The fee for an official search is 7*s.* 6*d.* in any one name for a period not exceeding ten years, and 2*s.* 6*d.* for every additional period of five years.

The following forms are ordered to be used with reference to official searches :—

FORM OF REQUISITION FOR OFFICIAL SEARCH.

Volume Page No. .

North Riding of Yorkshire. Registry of Deeds.

Requisition on behalf of [*name and description of the person on whose behalf the search is required to be made*] for official search in the name of (*d*), for the period from the day of , 18 , to the day of , 18 , for all instruments registered as affecting lands in the townships of in the said riding.

(Signed) .

FORM OF OFFICIAL CERTIFICATE OF SEARCH.

Volume Page No. .

North Riding of Yorkshire. Registry of Deeds.

I, , the Registrar of deeds of the North Riding of the county of York, having received a requisition on behalf of for an official search in the name of , for the period from the day of , 18 , to the day of , 18 , affecting lands in the townships of in the said riding, do hereby certify that I have caused an official search to be made in the above-specified name, for all instruments registered within the period above mentioned as affecting lands within the townships aforesaid, and that the following is a complete list of such instruments.

Nature of Instrument.	Date of Instrument.	Parties to Instrument.	Township &c., in which lands affected are situate.	Date of Registration.	Place of Enrolment.		
					Volume.	Page.	Number.

(Signed) .
Registrar (L.S.)

(*d*) If a search is required to be made in more names than one, a separate requisition must be made in respect of each name.

As to Middlesex and Yorkshire Registries.

It follows from what has been said above, that a purchaser of land in Middlesex or Yorkshire should search or require an official search to be made in the local registry in the names of all persons whose interest in the property, as disclosed by the abstract, is or has been such that a registered assurance by him would now prejudicially affect the title, and the search should extend over the whole period covered by the abstract (*dd*). If on such search any document affecting the property is found which is not abstracted, an abstract of it should be called for.

For what period.

The purchaser should also see that all documents requiring registration have been duly registered; and if it appears that any document has not been registered, he must determine whether, having regard to the subsequent dealings with the property, the want of registration prejudicially affects his title, and, if it does, he should require the vendor to register it at his own expense. The purchaser must pay for the registration of his own conveyance.

Right of purchaser to require registration.

By the Vendor and Purchaser Act, 1874 (*e*), it is enacted that where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Registered conveyance by devisee under unregistered will, prevails over subsequently registered conveyance by heir.

It follows that on a purchase of land in Middlesex from the devisee under a will where the six months have expired without registration, the purchaser need not require registration, provided that he satisfies himself that there is no registered assurance by the heir. As regards land in Yorkshire, it is apprehended that the above enactment is no longer in force, but the result will be the same under the new Act.

(*dd*) Sometimes the entries against one name are so numerous as to make a search impracticable without incurring a very heavy expense, and in such a case the solicitor should obtain an authority from his client to forego a search.

Search sometimes impracticable.

(*e*) 37 & 38 Vict. c. 78, s. 8.

Conveyance by heir when good against title under unregistered will.

Under the old Yorkshire Registry Acts, it was held that if a will was not registered within the prescribed time, and the heir made a conveyance to a purchaser for valuable consideration without notice which was registered, and afterwards a will was discovered and registered, the conveyance by the heir prevailed over the will (*f*). It is apprehended that under the new Act the heir must register an affidavit of intestacy, and that, until this is done, the purchaser cannot safely take a conveyance from him.

Judgments, Crown Debts, Lis Pendens, Annuities, Deeds of Arrangement, and Land Charges.

Division of subject.

The usual searches on completing a sale or mortgage of land, whether situate in a register county or elsewhere, are for judgments, Crown debts, executions, extents, *lis pendens*, and annuities, writs or orders affecting lands, deeds of arrangement, and land charges. It is proposed in the remaining part of this Dissertation to consider, first, the law of judgments and executions as affecting land under three heads viz.: (1) the law as it stood before Act 1 & 2 Vict. c. 110; (2) the alterations made by that Act and subsequent Acts; and (3) the present law as the result of legislation and judicial decision. In the next place the law with respect to Crown debts, extents, *lis pendens*, annuities, deeds of arrangement, and land charges as affecting land, will be stated; and the Dissertation will conclude with some practical directions as to the searches which, in the existing state of the law, ought to be made for these incumbrances.

The old Law as to Judgments.

Remedy by elegit first granted by Statute of Westminster.

The remedy of the judgment creditor against his debtor's lands has its origin in the Statute of Westminster the second (*g*). That Act enabled him to elect either to have a writ of *fieri facias* against the debtor's goods, or that the sheriff should deliver to him "all

(*f*) Chadwick *v.* Turner, L. R. 1 Ch. 310.

(*g*) 13 Edw. 1, c. 18.

the chattels of the debtor (saving only his oxen and beasts of the plough (*h*)), and the one half of his lands, until the debt be levied upon a reasonable price and extent." Hence the writ was, and still is, called a writ of elegit.

What could be taken by elegit under the old law.

The term "lands" in the statute included rent-charges (*i*), impropriate rectories and tithes (*k*), and land in reversion expectant on a lease reserving a rent (*l*). Copyholds (*m*), however, could not be extended, nor an advowson in gross (*n*), nor an estate tail, so as to affect the issue (*o*).

From what time judgment operated as a lien on lands.

A judgment was a general lien on the debtor's extendible freehold lands from the date of its being entered up, but chattels real were only bound from the time when the writ of execution was lodged with the sheriff.

Lien could be defeated by appointment under power.

And if the debtor had a general power of appointment over land, and also an estate in the same land in default of and until appointment, the lien of the judgment upon the estate was liable to be defeated by a subsequent exercise of the power (*p*), even though the appointee had notice of the judgment (*q*).

Right of execution extended by Statute of Frauds to land vested in a trustee.

Under the 10th section of the Statute of Frauds, execution might be had of land vested in a trustee for the debtor, provided that the trustee remained seised at the time of execution sued; but this section only applied where the trustee held on a simple trust for the debtor, and did not extend to an equity of redemption (*r*) or any equitable interest short of the absolute beneficial ownership (*s*).

Equity of redemption, &c., could be reached through Court of Chancery by appointment of receiver.

As regards equitable interests of this kind, the remedy of the creditor was to take proceedings in the Court of Chancery to have the legal impediment removed, *e. g.*, in the case of an equity of redemption by redeeming the mortgage, and to obtain in the meantime, by the appointment of a receiver, the

(*h*) It is now provided by the Bankruptcy Act, 1883, s. 145, that a writ of elegit shall not extend to goods.
(*i*) Moore, 32.
(*k*) Co. Lit. 159.
(*l*) 1 Roll. Ab. 894.
(*m*) 3 Co. 9.
(*n*) 3 Bac. Ab. 382.
(*o*) Ashburnham *v.* St. John, Cro. Jac. 85.
(*p*) Doe *d.* Wigan *v.* Jones, 10 B. & C. 459.
(*q*) Eaton *v.* Sauxter, 6 Sim. 517.
(*r*) Burdon *v.* Kennedy, 3 Atk. 739.
(*s*) Harris *v.* Booker, 4 Bing. 96.

same benefit which he would have had at law under an elegit, if the legal impediment had not existed. But it was necessary under the old law that the creditor should, before filing his bill, sue out an elegit (*t*).

The Acts of the present Reign as to Judgments.

1 & 2 Vict. c. 110, ss. 11 and 13.

By the Act 1 & 2 Vict. c. 110, the remedy by elegit was extended to "all such lands, tenements, rectories, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the date of the judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit." And by sect. 13, a judgment was made a *charge* in equity on "all lands, tenements, rectories, advowsons, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) of or to which such person shall at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding as against the debtor and all persons claiming under him, and shall also be binding against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest. But no judgment creditor shall be entitled to proceed in equity to obtain the benefit of his charge until the expiration of one year from the entering up of the judgment."

Judgments an equitable charge.

(*t*) Neate *v.* Duke of Marlborough, 3 M. & C. 407.

The above Act and subsequent Acts, viz., 2 & 3 Vict. c. 11, 3 & 4 Vict. c. 82, and 18 & 19 Vict. c. 15, contained provisions to the effect that a judgment should not affect lands as against purchasers, mortgagees, and creditors, unless registered and from time to time re-registered in the Common Pleas, the last re-registration to be within five years before the date of the conveyance, &c., and that a judgment, though duly registered, should not affect a purchaser or mortgagee without notice further or otherwise than it would have affected him under the old law. And a subsequent Act, 23 & 24 Vict. c. 38 (sects. 1 and 2), provided that a judgment entered up after the 23rd July, 1860, should not affect a purchaser or mortgagee unless a writ or other process of execution should have been issued and registered in the name of the creditor before the execution of the conveyance or mortgage and payment of the purchase or mortgage money, and unless also such writ or other process of execution should be executed and put in force within three calendar months from the time when it was registered.

Statutory provisions requiring judgments to be registered, in order to affect purchasers.

By the 27 & 28 Vict. c. 112, after reciting that "it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and recognizances," it is provided that "no judgment, &c., to be entered up after the passing of this Act" (viz., the 29th July, 1864) "shall affect any land of whatever tenure until the same shall have been actually delivered in execution by virtue of a writ of elegit or other lawful authority in pursuance of such judgment, &c." And the term "land" is to be interpreted as including "all hereditaments, corporeal or incorporeal, or any interest therein."

27 & 28 Vict. c. 112,

No judgment to affect land until same has been delivered in execution.

The same Act provides for the registration in the Common Pleas in the name of the debtor of the writ or other process of execution whereby any hereditaments shall have been delivered in execution, and enables a creditor to whom any hereditaments shall have been delivered in execution, and whose writ, &c., has been

Writ of execution may be registered,

and creditor who has registered writ may apply to Court for an order of sale.

duly registered, to obtain from the Court an order for the sale of the debtor's land.

Real Property Limitation Act, 1874, as to money secured by judgments.

By the Real Property Limitation Act, 1874 (*u*), "the right to recover any sum of money secured by a judgment, &c., charged upon or payable out of any land is barred at the end of twelve years next after a present right to receive the same has accrued to some person capable of giving a discharge for the same, unless in the meantime there has been part payment of principal or interest or an acknowledgment of the right thereto given in writing signed by the person by whom the same is payable or his agent."

Land Charges Registration Act.

Writs of execution may be registered in office of Land Registry,

and registration renewed every five years.

By the Land Charges Registration and Searches Act, 1888 (*x*), it is provided that every writ and order affecting land issued or made by any court for the purpose of enforcing any judgment, statute, or recognizance, and any order appointing a receiver or sequestrator of land, may be registered in the office of Land Registry in the name of the person whose land is affected. The registration is to cease to have effect at the end of five years, but may be renewed from time to time, and if renewed will have effect for five years from the date of the renewal. This registration is to have the same effect, and renders unnecessary registration in the Central Office of the Supreme Court.

Writ, unless registered, to be void against purchaser for value.

The Act further provides that every such writ and order, and every delivery in execution or other proceeding taken in pursuance of any such writ or order, shall be void against a purchaser for value unless and until the writ or order is registered under the Act (*y*). But if the writ or order is registered under the Judgment Act of 1864, registration under the new Act will not be necessary until the expiry of the period for which it is registered under the Act of 1864.

(*u*) 37 & 38 Vict. c. 57, s. 8.
(*x*) 51 & 52 Vict. c. 51, s. 5.
(*y*) Sect. 6.

The present Law of Judgments

The present state of the law, as the result of the legislation above referred to and of judicial decision, is believed to be correctly summarized in the following paragraphs. Summary of present law.

1. Judgments (which term includes all judgments, decrees, and orders of courts of law or equity whereby any sum of money or any costs, charges, or expenses are made payable to any person (*z*)) are enforceable against the debtor's lands, or such of them as are of an extendible nature, by means of a writ of elegit. Judgments enforceable against land by elegit.

2. The process of execution on a writ of elegit is as follows:—The writ is placed in the hands of the sheriff of the county, who thereupon holds an inquisition before a jury to inquire what the lands are, and, having ascertained this, he makes a return to the writ, stating that he has delivered the lands (specifying them) to the creditor. This return is the delivery of possession, and vests the land in the creditor, to hold to him and his assigns until the debt and interest shall have been levied. He can then bring an action of ejectment if the land is in possession, or if in reversion may sue for the rent. Process on an elegit. Nature of creditor's estate under an elegit.

3. Every legal estate or interest in land in possession or reversion, if vested in the debtor beneficially, or if he has a power of disposition over it exerciseable for his own benefit, is extendible at law. So also is land vested in a trustee on a bare trust for the debtor, where the debtor has the whole beneficial interest. So also are impropriate rectories and tithes, but not a rectory or tithe constituting an ecclesiastical benefice (*a*), nor an advowson in gross, nor an estate in remainder (*b*). Where the legal estate of the debtor is subject to any equity, the judgment creditor will take subject to that equity, in other words will take whatever beneficial interest the debtor has, and no What property may be taken on an elegit.

(*z*) 1 & 2 Vict. c. 110, s. 18.
(*a*) Hawkins *v.* Gathercole, 6 D. M. & G. 1; Bates *v.* Brothers, 2 Sm. & G. 509.
(*b*) *Re* South, L. R. 9 Ch. 369.

more (*c*). And a voluntary settlement by the debtor is not avoided by a subsequent judgment (*d*).

Equitable execution.

4. When the debtor's interest consists of an equity of redemption, or any other equitable interest not extendible at law, the Court will, at the suit of the creditor, appoint a receiver; and an order for the appointment of a receiver gives the creditor a remedy analogous to that of a legal execution, and is therefore commonly, though somewhat incorrectly, called "equitable execution" (*e*). Since the Judicature Act, a receiver may be appointed by any branch of the High Court (*f*); nor is it necessary to sue out a writ of elegit first, as was formerly the rule (*g*). Moreover, the jurisdiction is not now confined to cases where the property cannot be extended at law, but may be exercised wherever, in the opinion of the Court, the rights of the parties can be more fairly and conveniently worked out by that means (*h*).

Conditions under which a judgment entered up before 29th July, 1864, can now affect land as against purchasers.

5. A judgment entered up before the 29th July, 1864, will not affect any future purchaser or mortgagee of land unless it has been kept alive as against the operation of the Statute of Limitations by some part payment of principal or interest, or acknowledgment signed by the debtor within twelve years before the date of the conveyance or mortgage, and unless also it has been duly registered and re-registered as required by the judgment Acts applicable thereto (*i*), the last registration being within five years before the date of the conveyance or mortgage, and unless also as regards a judgment entered up between the 23rd July, 1860, and the 29th July, 1864, a writ or other process of execution has been issued and registered, and such execution has been put in force within three calendar months from the date of its registration (*j*).

(*c*) Whitworth *v.* Gaugain, 1 Ph. 728; Kinderley *v.* Jervis, 22 Beav. 1.

(*d*) Beavan *v.* Earl of Oxford, 6 D. M. & G. 507.

(*e*) Atkins *v.* Shepherd, 43 C. D. 131.

(*f*) Smith *v.* Cowell, 6 Q. B. D. 75.

(*g*) *Ex parte* Evans, 13 C. D. 252.

(*h*) *Re* Pope, 17 Q. B. D. 743.

(*i*) 1 & 2 Vict. c. 110, s. 19; 2 & 3 Vict. c. 11, s. 4.

(*j*) There must be few, if any, judgments entered up before 29th July, 1864, which, having regard to the above conditions, can now be binding upon land.

If the judgment has been duly registered, but the purchaser has no notice of it, he will not be affected by any of the extended remedies conferred by 1 & 2 Vict. c. 110, but will be bound to the same extent only as he would have been bound under the old law.

Judgment entered up since 29th July, 1864, does not affect land until actual execution.

6. A judgment entered up since the 29th July, 1864, does not affect any land (which expression includes any corporeal or incorporeal hereditament), and consequently does not affect any purchaser of land, unless and until it has been actually delivered in execution by virtue of a writ of elegit or other lawful authority, *e.g.*, the appointment of a receiver(*k*). But if there has been a delivery in execution, whether legal or equitable, the right of the judgment creditor prevails over that of a subsequent purchaser, if the writ or order has been registered and duly re-registered, either in the Central Office under the Act of 1864, or in the office of Land Registry under the Land Charges, &c. Act, 1888(*l*). After the registration of the writ or order, the creditor may apply to the Court for an order for the sale of the debtor's interest.

After execution, right of creditor prevails over that of subsequent purchaser if writ registered.

Registration of judgment now useless, but writ of execution should be registered.

7. It follows that as regards a judgment entered up since the 29th July, 1864, registration of the judgment itself is unnecessary and useless(*m*), but the writ of execution ought to be registered in the office of Land Registry.

Position of other judgment creditors, where execution has been obtained by one.

8. Where there are two judgment creditors, A. and B., and A. takes the land in execution, B.'s position seems to be as follows: he may, as heretofore, take proceedings in equity to remove the impediment caused by A.'s elegit, *e. g.*, by redeeming him (*n*), and

(*k*) Hutton *v.* Haywood, 9 Ch. 229; *Re* Cowbridge Ry. Co., 6 Eq. 619; Bécket *v.* Buckley, 17 Eq. 435; Wells *v.* Gilpin, 18 Eq. 298; Anglo-Italian Bank *v.* Davis, 9 C. D. 275.

(*l*) Registration in the Central Office, under the 27 & 28 Vict. c. 112, is not necessary in order to affect a purchaser. *Re* Pope, 17 Q. B. D. 743.

(*m*) *I. e.*, as against the debtor's land. But it appears to be still necessary to register a judgment in order to give it priority over other debts in the administration of the assets of a deceased debtor. See 23 & 24 Vict. c. 38, s. 3.

(*n*) *Re* Cowbridge Ry. Co., L. R. 5 Eq. 413.

if A., before being redeemed, obtains an order of sale under sect. 5 of the Act of 1864, B. will be entitled to share in the surplus proceeds of the sale after A.'s claim is satisfied.

Execution after contract of sale.

9. If land is delivered in execution after the debtor has contracted to sell it, but before the purchase is completed, and the execution is duly registered, the judgment creditor will take subject to the contract; but it is apprehended that he would be entitled to be paid out of the purchase-money, and that the purchaser could not safely pay the money to the vendor (*o*).

Estate in remainder cannot be reached by judgment creditor, *semble*.

10. As an estate in remainder cannot be taken in execution either legal or equitable, it is apprehended that a purchaser of such an estate would not be affected by any judgment against the vendor entered up after the 29th July, 1864, whether he has notice of it or not, and that the judgment creditor has no remedy against the land until the debtor's estate falls into possession.

Effect of Judgment Acts as to creditors.

Although not strictly within the scope of this Dissertation, the following observations on the effect of the Judgment Acts in regard to creditors, as between themselves, will probably be found useful.

Priority of judgment creditors before and since 1864, how ascertained.

Judgments entered up before the 29th July, 1864, rank as against the debtor's land according to priority of registration.

As between two judgment creditors whose judgments were respectively entered up between the 23rd of July, 1860, and the 29th of July, 1864, the former is not obliged to sue out execution on his judgment in order to preserve his priority against the latter.

As regards judgments entered up subsequently to the 29th of July, 1864, the creditor who first places the writ in the sheriff's hands has the priority (*p*).

How far registration necessary to preserve priority of judgments in

A judgment being a debt of record has priority over other debts in the administration of the debtor's estate after his death; but in order to preserve this priority, it must be registered under the Judgment Acts, the

(*o*) Thornton *v.* Finch, 4 Giff. 505.

(*p*) Guest *v.* Cowbridge Ry. Co., L. R. 6 Eq. 619.

last registration or re-registration being within five years previously to the debtor's death (*q*). the administration of debtor's estate.

Registration is not, however, necessary as regards a judgment obtained after the testator's or intestate's death against his executor or administrator. If, therefore, a creditor after the debtor's death sues the executor and obtains judgment, he acquires a priority over other creditors of equal degree who have not shown the same diligence; and as specialty and simple contract debts are now placed on the same footing (*r*), a judgment against an executor for a simple contract debt obtained before the date of the judgment in an ordinary administration suit, gives to such debt indirectly priority over specialty debts, whether such judgment be registered or not, and this priority is not affected by sect. 10 of the Judicature Act, 1875 (*s*).

Crown Debts.

Subject as regards purchasers and mortgagees to the enactments presently mentioned, debts due to the Crown upon record or by specialty (*t*) are a lien on, and may be enforced by a writ of extent against, all freehold property belonging to the debtor at the time when the debt becomes one of record or the specialty debt is contracted, or at any time afterwards, including equities of redemption and other equitable interests, rents, and impropriate tithes. If the debtor dies before an extent is issued, the lands may be taken in the hands of his heir or issue in tail (*u*), the writ in that case being called a writ of *diem clausit extremum*. Crown debts upon record or by specialty enforceable by extent against freehold and leasehold property, but not against copyholds.

Copyholds are not extendible by Crown process, and chattels real are only bound from the *teste* of the extent. Copyholds.

Crown debts cannot be defeated by the execution of Crown debts cannot be

(*q*) 23 & 24 Vict. c. 38, ss. 3, 4. See Simpson *v.* Morley, 2 K. & J. 71.

(*r*) 32 & 33 Vict. c. 46.

(*s*) Jennings *v.* Rigby, 33 Beav. 198; *Re* Williams's Estate, L. R. 15 Eq. 270; Smith *v.* Morgan, 5 C. P. D. 337. See also Winehouse *v.* Winehouse, 20 C. D. 545.

(*t*) 33 Hen. 8, c. 39, s. 36.

(*u*) *Ib.* s. 52; Lord Anderson's case, 7 Co. 21 *a*.

defeated by execution of power.

a power (*x*); but the Crown is bound by all interests actually created before the lien of the Crown has attached, and this would include an equitable mortgage by deposit of the title deeds (*y*).

A simple contract debt to the Crown is no charge on the debtor's land, until it becomes one of record.

Accountants to the Crown in the same position as specialty debtor.

An accountant to the Crown is by the Act 13 Eliz. c. 4, placed in the same position as a debtor to the Crown by specialty.

Purchasers and mortgagees are protected against Crown debts, &c., by the following enactments.

Provisions for registration of Crown debts, &c., as to purchasers, &c.;

By the 8th section of the 2 & 3 Vict. c. 11 (which is applicable to Crown judgments, &c., obtained between the 4th June, 1839, and the 5th July, 1865), it was enacted that no judgment, &c., thereafter to be obtained or entered into in the name or upon account of her Majesty, or inquisition by which any debt should be found due to her Majesty, or obligation or specialty thereafter to be made, or any acceptance of office thereafter to be accepted by officers whose lands should thereby become liable for the payment of arrearages under the Act of the 13 Eliz. c. 4, should affect any lands, &c., as to purchasers or mortgagees, until registered as therein mentioned in the Common Pleas.

and for re-registration every five years.

And by the 22 & 23 Vict. c. 35, s. 22, judgments, &c., registered as above, are required to be re-registered in order to bind lands, &c., as against purchasers, mortgagees, or creditors becoming such after the 31st of December, 1859, the last re-registration to be within five years before the date of the conveyance, &c., as it was obligatory on a private person.

Crown debts dated since 5th July, 1865, do not affect purchasers, &c., unless writ of extent issued and registered.

As to Crown debts dated subsequently to the 5th July, 1865, it is enacted by the 28 & 29 Vict. c. 104, s. 48, that any judgment, &c., obtained after that date by or on behalf of the Crown, or any obligation or specialty made after that date to the Crown, or any acceptance of office accepted after that date from or under the Crown, shall not affect any lands as to a

(*x*) Reg. *v.* Ellis, 19 L. J. (N. S.) Ex. 77.

(*y*) Casberd *v.* Attorney-General, 6 Price, 411.

bonâ fide purchaser or mortgagee, whether he have notice or not, unless a writ of extent or other process of execution thereon is issued and registered before the execution of the conveyance, &c., and the payment of the purchase or mortgage-money; and the 49th section prescribes the mode of registration of the writ or other process in the Common Pleas, and provides that no other registration of such writ or other process, or of the judgment, &c., in pursuance of or in relation to which it is issued, shall be necessary for any purpose. It follows that a purchaser will not be affected by any Crown debt, &c., dated before the 5th July, 1865, unless it has been registered or re-registered within five years previously to the conveyance, and will not be affected by any Crown debts, &c., contracted since that date, unless a writ of extent has been issued and registered.

Lis pendens.

Lis pendens, what it is.

A person who purchases during the pendency of a suit relating to the subject of his purchase, is bound by the decree that may be made against the person through whom he derives title, whether he has notice of the pending proceedings or not (*z*); in other words, neither party to a litigation can alienate the property in dispute so as to affect his opponent. The doctrine of *lis pendens* is founded, not upon any peculiar principles of a Court of Equity as to implied or constructive notice, but is common to Courts both of Law and Equity, and rests upon this foundation, that it would be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail.

Suit must be pending.

With regard to the application of the doctrine, it should be borne in mind, first, that the suit must be *pending*, for there is no such doctrine as that a decree of a Court is to be deemed implied notice to a purchaser after the cause is ended (*a*); and, secondly, that the

Purchaser only bound by

(*z*) Bishop of Winchester *v.* Payne, 11 Ves. 194, 197.

(*a*) 3 Atk. 391; Kinsman *v.* Kinsman, 1 R. & M. 617.

rights affecting the estate itself.

purchaser is only bound by rights ascertained in the suit affecting the estate itself which he purchases. Thus in *Worsley* v. *Earl of Scarborough* (*b*), it was held that where money is secured on an estate, and there is a question depending in the Court upon the right of or about that money, but no question relating to the estate whereon it is secured, a purchaser of the estate pending the suit without actual notice is not affected by the decree. Again, in *Bellamy* v. *Sabine* (*c*), a person took a mortgage from one of the defendants in a pending suit, and it was held that he was not affected by an equitable title of another defendant which appeared on the face of the proceedings, but of which such mortgagee had not notice, and to which it was not necessary for any of the purposes of the suit to give effect. Turner, L. J., in the course of his judgment, distinguished the case from one where the rights of the plaintiff might require that there should be an adjudication between the defendants.

How far the right of an executor or trustee to sell is affected by a pending action.

If an action is instituted for the administration of the estate of a deceased person or for the execution of the trusts of a deed or will, its effect as regards the power of an executor, trustee, or devisee to sell and make a good title may thus be stated:—

Executor may sell leaseholds notwithstanding administration decree, except in certain cases.

1. An executor may sell leasehold property at any time before decree (*d*), nor does the ordinary administration decree prevent him from selling it afterwards, unless a receiver is appointed, or an injunction is granted to restrain him (*e*), or unless an order is made for sale of it by the Court (*f*).

Executor or trustee cannot sell real estate after decree without sanction of Court.

2. An executor or trustee having power under the will to sell real estate for payment of debts, either by reason of an express trust for that purpose, or of there being a charge of debts, can sell and make a good title under that power at any time before decree, but not afterwards without the direction of the Court (*g*).

(*b*) 3 Atk. 391.
(*c*) 1 De G. & J. 584.
(*d*) Neeves *v.* Burrage, 14 Q. B. 504; 19 L. J. Q. B. 68.
(*e*) Berry *v.* Gibbons, L. R. 8 Ch. 747.
(*f*) Such an order would no doubt supersede the power of the executor to sell in any other way.
(*g*) Cafe *v.* Bent, 3 Hare, 245;

And generally trustees under a deed or will cannot after a decree for the execution of the trust by the Court exercise trusts or powers without the sanction of the Court; but a tenant for life is not precluded by such a decree from selling under the powers of the Settled Land Acts (*h*).

Specific devisee of land may sell before administration decree, unless made defendant.

3. A specific devisee of freehold land not charged with the payment of the testator's debts can sell at any time before decree, if the action is for administration generally, but not if the indorsement of the writ or statement of claim seeks relief against that particular land and the devisee is made a defendant for that purpose (*i*).

Notice of *lis pendens*.

A *lis pendens* is not necessarily an incumbrance. If the claim in respect of which the suit is instituted is unsustainable, a purchaser cannot refuse to complete on account of the pending of the suit (*k*).

Lis pendens must be registered.

The 2 & 3 Vict. c. 11, s. 7, provides that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until registered and re-registered in the Common Pleas in manner therein provided.

It has been already stated that under the Land Charges, &c. Act, 1888, a writ or order affecting land may now be registered in the office of Land Registry, and that such registration renders unnecessary registration in the Central Office of the Supreme Court (*l*). The Act provides that where the proceeding in which the writ or order was issued or made is for the time being registered as a *lis pendens*, the operation of the last-named registration is not to be affected (*m*).

Annuities.

Rent-charges for life must be registered,

By the 18 & 19 Vict. c. 15, s. 12, it is provided that any annuity or rent-charge granted after the passing

Walker *v.* Smallwood, Amb. 676. In this case the defendant's answer submitting to have the estate sold by the Court must have been considered as equivalent to a decree.

(*h*) Cardigan *v.* Curzon Howe, 30 C. D. 531.

(*i*) Price *v.* Price, 35 C. D. 297; Tyler *v.* Thomas, 25 Beav. 47.

(*k*) Bull *v.* Hutchons, 9 Jur. 954.

(*l*) See *supra*, p. 142.

(*m*) Sect. 6.

subject to certain exceptions.

of the Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on a life or lives, shall not affect any lands, &c., as to purchasers, mortgagees, or creditors, unless and until registered in the Common Pleas in manner therein provided; but annuities or rent-charges given by will are excepted.

Unregistered annuity good against subsequent purchasers with notice.

An unregistered annuity is good against subsequent purchasers with notice, and against trustees in bankruptcy and judgment creditors, whether they have notice of it or not (*n*).

Deeds of Arrangement.

Deeds of arrangement must be registered in Central Office.

Deeds of arrangement between a debtor and his creditors are required by the Deeds of Arrangement Act, 1887 (*o*), to be registered in the Bills of Sale department of the Central Office of the Supreme Court, and if not so registered are void.

Register of deeds of arrangement at office of Land Registry, in which register these deeds may be registered, and if not so registered are void against purchaser for value.

The Land Charges Registration and Searches Act, 1888, directs that there shall be kept at the office of Land Registry a register of deeds of arrangement affecting land. In this register a deed of arrangement may be registered in the name of the debtor on the application of a trustee of the deed, or of a creditor assenting to or taking the benefit of the deed (*p*). And it is provided that every deed of arrangement, whether made before or after the commencement of the Act, shall be void as against a person who, after the commencement of the Act, becomes a purchaser for value of any land comprised therein, or affected thereby, unless such deed is registered as above. But the enactment is not to affect any deed of arrangement made before the commencement of the Act until the expiration of one year from such commencement if registered within that year (*q*).

Result of enactments.

The result of the above enactments is, that a deed of arrangement is absolutely void unless registered in

(*n*) Greaves *v.* Tofield, 14 C. D. 563.
(*o*) 50 & 51 Vict. c. 57.
(*p*) Sects. 7, 8.
(*q*) Sect. 9.

the Central Office, and is void against a purchaser for value of land unless it is also registered in the Land Registry Office.

Land Charges.

Register of land charges.

Besides the register above mentioned, the Land Charges, &c. Act, 1888, directs that there shall be kept at the office of Land Registry a register of "land charges," which term is defined to mean a rent or annuity or principal moneys payable by instalments, or otherwise, with or without interest charged, otherwise than by deed, upon land, under the provisions of any Act of Parliament, for securing to any person either the moneys spent by him or the costs, charges, and expenses incurred by him under such Act, or the moneys advanced by him for repaying the moneys spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament (*r*), and a charge under the 35th section of the Land Drainage Act, 1861, or under the 29th section of the Agricultural Holdings (England) Act, 1883, but does not include a rate or scot (*s*).

Land charges, how to be registered.

Any land charge, as above defined, may be registered in the register of land charges, in the case of freehold land in the name of the person beneficially entitled to the first estate of freehold, and in the case of copyhold land in the name of the tenant on the court rolls at the time of the creation of the land charge. Where the person by whom the application was made, pursuant to which the land charge was created, was beneficially entitled to a lease for lives or a life at a rent or to a term of years, the land charge is to be registered also in the name of that person (*t*).

Land charge, unless registered, void

Any land charge created after the commencement of the Act is void against a purchaser for value unless

(*r*) The terminable rent-charges created under the Improvement of Land Act, 1864, come within this definition.

(*s*) Sect. 4.

(*t*) Sect. 10. This section does not apply to charges imposed against the will of the owner. Queen *v.* Vice-Registrar of Land Registry, 24 Q. B. D. 178.

against purchaser for value.

registered (*u*); and after the expiration of one year from the first assignment by act *inter vivos* occurring after the commencement of the Act of a land charge created before that date, the person entitled thereto will not be able to recover it against a purchaser for value unless it is registered before the completion of the purchase (*x*).

Searches and Inquiries.

Registers of judgments, &c., now kept at the Central Office of the Supreme Court.

The registers of judgments, Crown debts, executions, extents, *lis pendens*, and annuities, which were formerly kept in the Common Pleas office, have been transferred to the Central Office of the Supreme Court.

Official searches for judgments, Crown debts, &c.

The Conveyancing Act, 1882, s. 2, provides that on the requisition of any person interested, or his solicitor, an official search shall be made in the Central Office for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office. The officer making the search is directed to make and file in the office a certificate setting forth the result thereof; and office copies of the certificate are to be issued on requisition. In favour of a purchaser, as against persons interested under or in respect of judgments, &c., the certificate, according to the tenour thereof, is conclusive, affirmatively or negatively, as the case may be.

Protection to solicitors and others obtaining an official search.

The Act also provides that where a solicitor obtains an office copy certificate of result of search, he shall not be answerable in respect of any loss that may arise from error in the certificate; and that where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable; and that where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

Rules as to searches.

Rules dated in December, 1882, have been made under the above enactment, and are set out at length in an Appendix to this Volume.

(*u*) Sect. 12. (*x*) Sect. 13.

Registers kept at office of Land Registry may be searched.

The registers kept at the office of Land Registry under the Land Charges, &c., Act, 1888, may also be searched, and the provisions as to searches in the Central Office contained in sect. 2 of the Conveyancing Act, 1882, are made applicable to searches in the registers in the office of Land Registry (*y*). Rules have been made under the Act of 1888, which are also set out in the Appendix to this Volume.

What searches should now be made.

As the result of what has been said in the preceding pages the following practice as to searches is recommended: If the vendor is a beneficial owner the purchaser should make a requisition for an official search in the Central Office according to the Form No. VI. annexed to the Rules of December, 1882, and for an official search in the office of Land Registry in the Form No. V. annexed to the Land Charges Rules, 1889. The search in the Central Office will be in the name of the vendor (1) for judgments, revivals, decrees, orders, rules, and *lis pendens*, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for a period extending back five years; (2) for executions for a period extending back to the 29th July, 1864, or to the time when the vendor's title first accrued, if later than that day; and (3) for annuities for a period extending back to the 26th April, 1855, or to the time when the vendor's title first accrued, if later than that day. The search in the office of Land Registry will be in the name of the vendor (1) in the register of writs and orders for a period extending back five years, and (2) in the register of deeds of arrangement and the register of land charges for the whole period covered by the register, unless the vendor's title has accrued since the commencement of the register, in which case the search will be for the period during which the vendor has been entitled.

Against a vendor being a beneficial owner.

What should be done if judgment, &c., disclosed.

If the certificate of search discloses a judgment which was originally entered up before the 23rd July,

y) Sect. 19.

1860 (*z*), or a Crown judgment, &c., obtained before the 5th July, 1865, the satisfaction or release of the judgment, or a *quietus* as regards the Crown debt, should be required.

If a judgment is disclosed which was entered up between the 23rd July, 1860, and the 29th July, 1864, then a further search should be directed in the name of the *creditor* to ascertain whether any writ of execution thereon has been issued and registered. If no such registered execution is found, and no action has been taken thereon for three months from the registration, it may be disregarded.

If a judgment is disclosed which was entered up since the 29th July, 1864 (*a*), the purchaser need take no notice of it, unless a writ or order of execution under it is registered either in the Central Office or in the office of Land Registry.

If the search in the office of Land Registry discloses any writ or order affecting the land or any deed of arrangement or land charge, the incumbrance must of course be got rid of.

Search to be made where vendors are trustees.

If the vendor is a trustee, a search for *lis pendens* should be made in his name, both in the Central Office and also in the office of Land Registry; and if there are two or more trustees, a search in the name of one, if he has been a trustee the whole time, would appear to be sufficient.

If the vendors are trustees selling under a trust for sale, and there is a person entitled for life or otherwise to the income of the proceeds of sale in whom a power of sale is vested by virtue of sect. 63 of the Settled Land Act, 1882, and such person does not concur in the present sale, a search should be made for a *lis pendens* in the names of the trustees, or in the name of

(*z*) It is apprehended that there are very few (if any) judgments now on the register which were originally entered up before this date, or even before the 29th July, 1864.

(*a*) Although as against the debtor's land, judgments entered up since the 29th July, 1864, need not be registered, it is supposed that a registered judgment still has an advantage over an unregistered one in other respects, *e.g.*, in the administration of assets, and it is therefore still usual to keep on re-registering them.

one of them, in order to ascertain whether an order has been made under sect. 7 of the Settled Land Act, 1884, for giving leave to the tenant for life to exercise the statutory powers.

Search when vendor has become entitled by descent or devise.

If the vendor has acquired the property recently by descent or devise, it will be desirable to extend the search to his devisor or ancestor. If he has acquired it by a recent purchase he should be asked to produce the certificate of search made by him against his vendor.

Cases in which the records of the Bankruptcy Court should be searched.

If the result of a search discloses a deed of arrangement, or if for any other reason there is ground for suspicion that the vendor may have been made a bankrupt, a further search should be made in the records of the Bankruptcy Court (*aa*).

The searches which should be made in the local registries where the land is situate in Middlesex or Yorkshire have been already stated (*b*).

When search should be made in office of Land Registry to ascertain whether land has been registered under Act of 1862.

Where land in any part of England is sold under a title commencing later than 1862, it appears unsafe to assume that the land has not been registered under the Land Registry Act, 1862, and a prudent purchaser will therefore in such a case search the public index of registered land kept at the office of Land Registry to ascertain whether the land has been registered or not (*c*).

(*aa*) The risk incurred by neglecting to search for bankruptcies is well illustrated by the recent case of *In re* New Land Development Association and Gray, (1892) 2 Ch. 138. In this case W. and J. acquired land in 1890 under a devise as tenants in common, and in the same year they sold the land to a land company. In 1891 it was discovered that W. had become a bankrupt in 1888, and was still undischarged, whereupon the trustee in the bankruptcy intervened, and claimed a moiety of the land.

(*b*) *Supra*, p. 137.

(*c*) The following observations appear in a book recently published by Mr. C. F. Brickdale, assisting barrister to the Land Registry: "An instance has lately occurred of registered land having been dealt with as though unregistered for upwards of twenty-two years, in the course of which time a considerable number of dealings for value had taken place, and the vendor in the last transaction was quite unaware of the fact of the registration of the title. There are a certain number of registered estates where it is known that sales have taken place, and yet none of these sales, or only a small proportion, have as yet been recorded on the register. In these cases a purchaser under a short title may easily miss the notice of registration endorsed on the earlier

Searches in the court rolls.

Where copyhold land is the subject of the sale, the court rolls should be searched for entries affecting the property.

Inquiry of tenants.

An inquiry should always be made of the tenant (if any) of the property, as to the nature and terms of his tenancy.

Inquiries as to notice on sale or mortgage of chose in action.

Where the subject of sale or mortgage is a chose in action of any description, as, for instance, personalty vested in trustees, a debt, or policy of insurance, &c., inquiry should be made of the legal holder or holders as to what notice they have received of prior incumbrances, and also notice should be given to them of the purchase or mortgage as soon as the transaction is completed. The rule in such cases is, that of two purchasers or incumbrancers, the one who gives priority of notice is entitled to preference.

PURCHASE DEEDS.

Division of the subject.

In this Dissertation it is proposed to consider:—1. The mode of assurance of freehold estates. 2. The mode of assurance of copyhold land, and other matters relating to copyholds. 3. The disabilities of certain persons in regard to the sale and purchase of land. 4. The form and ordinary parts of a deed of conveyance. 5. The law as to covenants running with the land, restrictive covenants, and implied easements. 6. Conveyances of land with an exception of mines and minerals, or of mines and minerals without the surface, and the mutual rights and obligations of the owners of the mines and of the surface in such cases. 7. Other matters relating to the conveyance. 8. The stamps on conveyances.

deeds. An appreciable risk of fraud and inevitable ultimate inconvenience are occasioned by ignoring the register."

The fee for a search is 5*s*., and an official search can be obtained for a fee of 10*s*.

I. *The mode of assurance of freehold estates.*

Feoffment ancient mode of conveying freeholds.

A feoffment with livery of seisin was the ancient mode of conveying a freehold estate in possession in corporeal hereditaments, while incorporeal hereditaments, such as rents, advowsons, reversionary interests in freeholds, &c., being incapable of livery, were transferred by grant: hence the distinction between corporeal and incorporeal hereditaments, that the former were said to lie in livery, the latter in grant. Subsequently to the Statute of Uses, an assurance of corporeal hereditaments might be effected by a bargain and sale by deed enrolled within six months, the bargain and sale raising the use and the statute transferring the legal estate to the bargainee. But as the Act (*d*) which made enrolment of the deed necessary related only to estates of inheritance or freehold, chattel interests in land were not included in its operation. Accordingly, the mode of conveyance by lease and release was adopted, which at once got rid of both the inconvenient ceremonies of livery of seisin and enrolment. After the passing of the Statute of Uses, this mode of conveyance operated as follows: the lease was a bargain and sale for a year made to the purchaser in consideration of a nominal sum, by which he became without entry legal tenant in possession for one year under the statute. The purchaser being by this means put in possession of the property, only a reversion was left in the vendor. This reversion, being a proper subject of release at common law, was by a deed dated the next day released to the purchaser.

Lease and release.

Statutory release.

By the Act of the 4 & 5 Vict. c. 21, a release alone was made effectual for the conveyance of lands, provided the deed was expressed to be made in pursuance of that Act: and by the 8 & 9 Vict. c. 106, s. 2, all corporeal hereditaments are made to lie in *grant* as well as livery, so that there is no further occasion to make the conveyance by a release grounded on a lease for a

Grant.

(*d*) 27 Hen. 8, c. 16.

year, or to refer to the Act passed for dispensing with a lease for a year. Whilst, then, reversionary interests in freeholds pass by grant at common law, freehold hereditaments in possession will now pass by statutory grant. But it is not necessary to use the word "grant" in order to convey either corporeal or incorporeal hereditaments (*e*).

Convey.

II. *The mode of assurance of copyhold land, and other matters relating to copyholds.*

Mode of alienating copyholds.

The usual mode of alienating copyholds is by a surrender into the hands of the lord of the manor of which the lands are held to the use of the purchaser, and the admittance of the latter, by whom a fine is paid. These proceedings are formally entered on the court rolls, and a copy of the court rolls is delivered to the purchaser. The admission should be made in strict accordance with the terms of the surrender (*f*); and if there is any variation, the admittance will operate according to the surrender (*g*). Until the admission of the surrenderee, the surrenderor remains tenant to the lord, and the legal estate remains in him.

Form of admission.

Surrender may be made in court or out of court.

The surrender may be made either in court or out of court. If made in court it is entered on the court rolls, and a copy of the roll, so far as relates to the surrender, is made by the steward, stamped with the proper *ad valorem* duty, and delivered to the purchaser. If made out of court, a written memorandum is made of the proceedings, signed by the parties and the steward, and duly stamped; and the surrender, all presentments being now dispensed with, is forthwith entered on the court rolls (*h*).

Surrenderee cannot surrender until admittance.

A copyholder after a surrender by him cannot surrender to another (*i*); and a surrenderee cannot surrender until he himself has been admitted (*k*).

(*e*) Conveyancing Act, 1881, s. 49.
(*f*) Haward *v.* Raw, 6 H. & N. 308.
(*g*) Scri. Cop. 312.
(*h*) 4 & 5 Vict. c. 35, ss. 89, 90.
(*i*) Scri. Cop. 118.
(*k*) Scri. 117, 200.

Purchase of copyholds by corporation.

Copyholds, when purchased by a corporation which is empowered to hold land, should be surrendered to trustees for their benefit, and not to the corporation directly, as the lord would be justified in refusing admittance to a body who could not discharge the services, and the effect of such admittance would also be the loss of the fines consequent upon death (*l*).

Owner of legal estate real tenant.

If the legal estate in copyholds is vested in a trustee by admission, he is the tenant, and is consequently responsible to the lord for the performance of the feudal services, and the customary fines will be payable on his death and alienation, and not on the death or alienation of the equitable owner.

Admission of joint-tenants, &c.

Joint-tenants are but one tenant to the lord, and coparceners are but as one heir; so that the admission of one of many joint-tenants or coparceners is the admission of all. They are consequently admitted on the payment of one fine (*m*); and on such admittance it would seem that, in the absence of special custom, the steward is only entitled to one fee (*n*). Joint-tenants or coparceners, when once admitted, can, without the payment of any additional fine, release their share to each other by deed of release. Where two out of three devisees in trust of copyholds released by deed their shares to the remaining trustee, the lord was held to be entitled only to a single fine on the admission of the remaining trustee, and the deed of release was held to operate as a disclaimer by the releasors of their right to be admitted (*o*).

Disclaimer by one trustee.

But if one of several trustees purports to disclaim after he has acted, the disclaimer is void, and the admission of one will be held the admission of all, and the fine must be paid accordingly (*p*).

Death of sole trustee after admittance.

In a case where a sole trustee died after admittance, and, his customary heir being out of the jurisdiction, a new trustee was appointed under the Trustee Act, it

(*l*) 1 Watk. Cop. 299.
(*m*) Scri. Cop. 347.
(*n*) Traherne *v.* Gardener, 5 El. & Bl. 913.
(*o*) Wellesley *v.* Withers, 4 El. & Bl. 750.
(*p*) Bence *v.* Gilpin, 3 Exch. 76.

was held that one fine only was payable on the admittance of the latter (*q*).

Tenants in common, &c.

Tenants in common, on the other hand, must be admitted severally, and a fine must be paid in respect of the share of each. On the death of tenants in common and coparceners, as there is no survivorship, their heirs and representatives must be admitted, and pay several fines for the shares to which they respectively may be admitted (*r*).

Admission of representatives of tenants in common, &c.

Admission of tenant for life generally admission of remainderman.

If a copyhold tenement is limited to A. for life or for a less interest, with remainders over, the admission of A. is the admission of all in remainder, and one fine only is payable (*s*), unless there is a special custom to the contrary (*t*). It would appear that the lord may take the full fine from the tenant for life or may apportion it between him and the remainderman (*u*).

And of appointee in remainder.

Where a copyhold tenement is limited to A. for life, with remainder to such persons as A. shall appoint, it is apprehended that the appointee is in the same position as if he had been named in the will, so that the admission of A. enures to his benefit (*x*).

Admission of devisee in fee enures for

Again, if a copyhold tenement is devised to A. in fee, subject to an executory devise over to B. upon an

(*q*) Bristowe *v.* Booth, 5 C. P. 80.

(*r*) Scri. Cop. 297; 1 Watk. Cop. 82.

(*s*) Brown's Case, 4 Co. 22 b.

(*t*) Doe d. Whitbread *v.* Jenning, 5 East, 522; Smith *v.* Glasscock, 27 L. J. C. P. 192.

(*u*) Scri. Cop. 343; Blackburne *v.* Graves, 1 Mod. 120. In this case Lord Hale said: "I do not see any inconvenience whereby the admission of a tenant for life is not the admission of all in remainder, for fines are to be paid notwithstanding by the particular remainders; and so the books say it shall not prejudice the lord. It shall not prejudice the lord, for if a fine be assessed for the whole estate, there is an end of the business; but if a fine be assessed for the particular estate only, the lord ought to have another."

(*x*) Lord Kensington *v.* Mansell, 13 Ves. 246. In Seaman *v.* Woods, 24 Beav. 372, a copyhold was devised to A. for life, and the executors were directed to sell after A.'s death, which they did, and bargained and sold the property to B., the purchaser. Romilly, M. R., was of opinion that the admission of A. was not the admission of B. It will be seen that the will contained no devise in remainder after the death of A., so that the copyhold descended to the heir-at-law, and the subsequent conveyance to B. operated not as a remainder but as an executory devise displacing the heir's title by descent. If the will had devised the property after the death of A. to C., the question would have been different, and it is submitted that in that case the admission of A. would, in the absence of a special custom, have been the admission of C., and also of B. See Randfield *v.* Randfield, *infra*.

event which happens, the admission of A. enures to the benefit of B. (*y*).

benefit of executory devisee.

As the admission of the tenant for life is, in the absence of a special custom, the admission of the remainderman, it follows that the latter may during the continuance of the particular estate surrender (*z*). But if there is a special custom requiring a remainderman to be admitted, then if he applies for admission during the continuance of the particular estate, he must pay the fine immediately (*a*).

Remainderman may surrender.

If a remainderman dies and his heir surrenders, the lord cannot be compelled to accept the surrender, whether made in the lifetime of the tenant for life or afterwards, until the fine on the descent is paid (*b*).

Also heir of remainderman, on payment of fine.

If the remainderman has devised his estate, the devisee must be admitted on the death of the tenant for life, and if he wishes to surrender in the lifetime of the tenant for life, he must be admitted and pay the fine before he makes the surrender.

Devisee of remainderman must be admitted.

If a remainderman surrenders or devises his estate, and the surrenderee or devisee dies during the continuance of the particular estate, his heir can claim to be admitted on the payment of a single fine (*c*).

If a copyholder surrenders to particular uses which determine, he is in of his old seisin, and need not be admitted again (*d*). And if a copyholder devises to uses which do not exhaust the whole fee, the reversion descends to the heir (*e*).

When uses determine, copyholder is in of his old seisin.

(*y*) This was so decided by Kindersley, V.-C., in Randfield *v.* Randfield, 1 Dr. & Sm. 310; and although the decision was reversed by the Court of Appeal, on the ground that there was a special custom requiring remaindermen to be admitted, Turner, L. J., expressed his concurrence in the opinion of the V.-C. on the general question.

(*z*) Gyppen *v.* Burney, Cro. Eliz. 504; Auncelme *v.* Auncelme, Cro. Jac. 31.

(*a*) Evelyn *v.* Worsfold, 15 L. T. R. 4.

(*b*) Reg. *v.* Lady of the Manor of Dullingham, 8 Ad. & Ell. 858.

(*c*) Garland *v.* Alston, 4 Jur. N. S. 539.

(*d*) 9 Co. 107 a.

(*e*) Bullen *v.* Grant, Cro. Eliz. 148. In Doe d. Winter *v.* Lawes, 7 Ad. & Ell. 195, it was held, that if a copyhold is devised to A. for life, and the reversion descends on the heir, the admission of A. is the admission of the heir, and that there is no difference in this respect between a reversion and a remainder; but in another case the Court expressed a contrary opinion, and

Admittance of termor cannot be insisted on.

In a case where copyhold land was devised to trustees for a term of years, and subject thereto to A. in fee, and the lord admitted A. "according to the purport and effect of the will," who paid a full fine, it was held that the lord could not afterwards insist on the admittance of the trustees (*f*).

Heir must be admitted, or lord may seize.

On the death of a tenant in possession intestate, the heir must come in and be admitted, or the lord may seize the lands into his hands *quousque* after proclamation has been made at three consecutive courts (*g*): and if the lord holds under such a seizure for twelve years, there being no disability, the heir's right to compel admittance is gone (*h*).

Arbitrary fines on admission, what may be taken.

A fine on admission may be certain or arbitrary. An arbitrary fine must be reasonable, which has been defined as not exceeding two years' improved value on the admission of a single tenant. If two or more persons are admitted as joint tenants, two years' value may be taken for the first tenant, half that amount for the second, half of the latter amount for the third, and so on (*i*). And in manors where the admission of a tenant for life is the admission of the tenant in remainder also, it is apprehended that the lord may on the same principle claim a fine not exceeding two years' value for the tenant for life, and half that amount for the remainderman.

Admission on appointment of new trustees.

Where property is in settlement, and an admission takes place on the appointment of new trustees, the fine payable in respect of such admission must be borne by the particular estate and the estate in remainder, in proportion to the value of such estates respectively (*k*).

Release from trustees.

Where copyholds were devised to trustees for certain persons who sold the copyholds, and the pur-

decided that the lord could not be compelled in such a case to accept a surrender by the heir until the descent fine was paid.

(*f*) Everingham *v.* Ivatt, L. R. 7 Q. B. 683; 8 *ib.* 388.

(*g*) Scri. Cop. 226.

(*h*) Walters *v.* Webb, L. R. 5 C. 531; 3 & 4 Wm. 4, c. 27, ss. 2, 3.

(*i*) Wilson *v.* Hoare, 10 Ad. & El. 236; Shepherd *v.* Woodford, 5 M. & W. 608; 9 L. J. (N. S.) Ex. 90.

(*k*) Carter *v.* Sebright, 26 Beav. 374.

chaser was admitted on the surrender of the customary heir, the purchaser was held entitled to call for a release from the trustees of their bare right to be admitted (*l*).

Statute of Uses.

The Statute of Uses does not extend to copyholds, so that if a surrender is made to the use of A. in trust for B., A. is the person to be admitted, and B. has only an equitable estate.

Statute *De Donis*.

The Statute *De Donis* does not apply to copyholds, so that unless the custom of the manor authorizes the creation of entails, all *legal* limitations of copyholds in the form of an estate tail would only be conditional fees. And a trust of copyholds can only be entailed where there is a custom to entail the legal estate (*m*).

Equitable interests.

An equitable interest in copyholds may be assigned by deed (*n*), but it cannot be surrendered except for the purpose of barring an estate tail (*o*).

Leases of copyholds.

Copyholds can only be leased by the copyholder for one year, or for any less period, without the licence of the lord, unless there is a custom in the manor enabling the tenant to lease for a longer period; and an actual lease without licence for any period not warranted by the custom of the manor would operate as a forfeiture. Such leases are, however, good and binding as between the parties, and also all other persons, except the lord, who may enter for a forfeiture; but such right of entry may be waived or destroyed by any act on the part of the lord which amounts to an acknowledgment of the title of the copyholder, or by the lord not enforcing his right for twelve years (*p*).

Forfeiture by waste, &c.

Copyholds may also be forfeited by the tenant's voluntary or permissive waste, such as pulling down houses, cutting down trees, digging for mines, failing to keep the property in good repair, or any other act or omission whereby the property should become

(*l*) Steele *v.* Waller, 28 Beav. 466. See Garland *v.* Mead, L. R. 6 Q. B. 441.

(*m*) Lewin on Trusts, p. 46.

(*n*) 1 Scri. Cop. 262; King *v.* Lord of Manor of Hendon, 2 Term Rep. 484.

(*o*) 3 & 4 Wm. 4, c. 74, s. 50.

(*p*) See Scri. Cop. pp. 66, 326; 2 Watk. Cop. p. 30, note; 37 & 38 Vict. c. 57.

deteriorated. A forfeiture may also be incurred by neglect to attend the customary court after being summoned, or by a refusal to pay the fine when certain or reasonable, or the customary rent when demanded, or by the tenant wilfully withholding his services, &c. (*q*). Equity, however, will in certain cases relieve against a forfeiture (*r*), though not against a voluntary act, nor unless a compensation can be made to the lord (*s*).

Free bench.

The widow of a copyholder is not dowable except by custom. Customary dower is usually called free bench, and depends upon the custom of the particular manor. It is generally limited to the lands of which the husband *dies* seised, but sometimes it extends to all the lands of which he is seised at any time during the coverture. In most manors the widow's right to free bench is confined to one-third of the land, sometimes it extends to some other part, and sometimes to the whole. It is generally for the life of the widow, but sometimes during widowhood only (*t*).

No free bench out of a trust.

A widow is not entitled to free bench out of a *trust* of copyholds (*u*), nor out of copyholds of which her husband is surrenderee, but dies before admittance (*x*). And free bench may generally be defeated by the alienation of the husband by an act *inter vivos*, or even by his contract for sale (*y*), or by the surrender of the husband, although the admittance of the surrenderee may not take place until after the husband's death (*z*).

Testamentary directions to sell, and scheme for saving double fine.

When a testator has in view an immediate conversion of his copyhold lands, it is usual, instead of devising them to trustees upon trust for sale, to direct or authorize the trustees to sell them, in order to save the necessity of a double admittance and a double fine, for, in the event of the property being sold under such

(*q*) Scri. Cop. 434 *et seq.*; 1 Watk. Cop. 398 *et seq.*
(*r*) See Andrews *v.* Hulse, 4 K. & J. 392.
(*s*) 1 Watk. Cop. 422.
(*t*) Scri. Cop. 72, 73.
(*u*) Scri. Cop. 75.
(*x*) Smith *v.* Adams, 5 De G. M. & G. 712.
(*y*) Scri. Cop. 74.
(*z*) *Ibid.* 90.

a direction, the purchaser is entitled to be admitted on the payment of a single fine (*a*).

Power of lord with limited interest.

The lord, however limited his interest may be, can accept surrenders and make grants of copyholds held of the manor as fully as if he were seised of the manor in fee, and if, after having accepted a surrender, his interest should determine before admittance, his successor would be compelled to admit the surrenderee (*b*).

Enfranchisement of copyholds.

The tenure of copyholds may be changed so as entirely to alter their character by the lord's enfranchisement; but in order to make an absolute enfranchisement, except under the special powers conferred by the Copyhold Acts, the lord must have the whole freehold interest. The enfranchisement must be to the tenant; but it does not follow that the tenant must have the whole fee in himself, in order to accept an absolute enfranchisement. Although the copyholder may have only a partial interest in the premises, a conveyance to him by the lord of the whole fee simple would operate as an absolute enfranchisement, and would enure for the benefit of those in remainder as well as for that of himself (*c*).

Enfranchisement of copyholds under Acts.

Several Acts have been passed from time to time to facilitate the enfranchisement of copyhold property; which Acts are known by the short title of the Copyhold Acts. The Copyhold Act, 1841 (*d*), provides for voluntary enfranchisements. It constitutes Commissioners to be called "The Copyhold Commissioners" (*e*) (afterwards the Land Commissioners (*f*), and now represented by the Board of Agriculture (*g*)), and enables the lord of a manor, whatever may be his estate or interest therein, with the consent of the Commissioners, to enfranchise any lands, and any tenant, whatever may be his estate or interest, to accept such enfranchisement, subject to a provision requiring, in the case of any party to an enfranchisement having less than an absolute interest, the giving of certain notices to the

Voluntary enfranchisements.

(*a*) Glass *v.* Richardson, 2 De G. M. & G. 658. See also Reg. *v.* Wilson, 9 Jur. N. S. 439; Garland *v.* Mead, L. R. 6 Q. B. 441.
(*b*) Scri. Cop. 79, 5th ed.
(*c*) 1 Watk. Cop. 437, 438.
(*d*) 4 & 5 Vict. c. 35.
(*e*) Sects. 1—10.
(*f*) See 45 & 46 Vict. c. 38, s. 48.
(*g*) 52 & 53 Vict. c. 30.

other parties interested (*g*). The Act contains provisions as to the application of enfranchisement money where the lord has a limited interest only (*h*); and a subsequent Act provides for charging the expenses of enfranchisements on the manor or lands, or upon both (*i*).

Compulsory enfranchisements.

The Copyhold Acts, 1852, 1858, and 1887 (*k*), provide for compulsory enfranchisements. The following is a summary of their principal provisions:—

Tenant or lord may require and compel enfranchisement.

1. The tenant or lord may at any time after admittance require and compel enfranchisement, but the tenant must first have paid or tendered the fine and fees due on such admittance (*l*). The consideration to be paid to the lord for the enfranchisement, unless the parties agree, is ascertained by valuation under the direction of the Board of Agriculture now representing the Land (formerly Copyhold) Commissioners (*m*).

Notice to be given to tenant of his right by steward.

2. On the admission of any tenant, the steward is bound to give him a notice informing him of his right to enfranchise (*n*).

Right of former tenant after enfranchisement to inspect court rolls.

3. After any enfranchisement any persons interested in the enfranchised land may inspect the court rolls (*o*), and when all the lands of a manor have been enfranchised, the court rolls are to be handed over to the Master of the Rolls, who is to allow them to be inspected by all persons interested (*p*).

In certain cases lord may elect to purchase tenant's interest instead of enfranchising.

4. Where the lord can show to the satisfaction of the Board that any change in the condition of land proposed to be enfranchised, which might have been prevented by the incidents of copyhold tenure, would prejudicially affect in enjoyment or value the mansion house and grounds of the lord, the lord may offer to purchase the tenant's interest at a valuation, and if the tenant refuse, the land shall not be enfranchised (*q*).

Lord or tenant may compel extinguish-

5. Any lord or tenant or owner of any land liable to any heriot or any quit rent, or other manorial incident,

(*g*) Act of 1841, s. 56.
(*h*) Sects. 73—76.
(*i*) 21 & 22 Vict. c. 94, s. 24.
(*k*) 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94; 50 & 51 Vict. c. 73.
(*l*) Act of 1852, s. 1.
(*m*) Act of 1858, s. 8; Act of 1887, s. 3; 52 & 53 Vict. c. 30.
(*n*) Act of 1887, s. 1.
(*o*) Act of 1852, s. 20.
(*p*) Act of 1887, s. 48.
(*q*) Act of 1852, s. 25.

may require and compel the extinguishment of such rights and incidents, and the provisions as to enfranchisement are made applicable to such an extinguishment (*r*). ment of manorial incidents.

6. A tenant may, if he thinks fit, pay the compensation in a gross sum before completion of the enfranchisement; but, subject to this power, the compensation will in the following cases, viz. (a) when the enfranchisement is effected at the instance of the lord; and (b) where the land can in the opinion of the Board of Agriculture be sufficiently identified, and the compensation amounts to more than one year's improved value, take the form of an annual rent-charge equal to interest at 4 per cent. upon the amount of compensation ascertained by the valuation (*s*). The rent-charge is redeemable (*t*). Compensation, how to be paid.

7. The enfranchisement is carried into effect by the Board by an award of enfranchisement (*u*). Award of enfranchisement.

8. Commonable rights attached to land when copyhold will continue to attach thereto after enfranchisement (*x*), and an enfranchisement does not affect the estate or rights of any lord or tenant in mines, minerals, quarries, &c. (*y*); but the owner of enfranchised land may, notwithstanding the reservation of minerals, &c., to the lord, disturb or remove the soil for the purpose of making roads or drains, or erecting buildings or obtaining water (*z*). Enfranchisement not to affect commonable rights, or rights in mines, &c.

9. The Acts do not apply to copyholds for a life or lives, or for years, where there is no right of renewal (*a*). Acts do not apply to copyholds for lives or years where no right of renewal.

10. New copyholds cannot be created without the consent of the Board of Agriculture (*b*). New copyholds.

11. Expenses of enfranchisement are to be borne by the party requiring it (*c*), and the scale of the steward's compensation is fixed by a schedule to the Act of 1887. Expenses.

(*r*) Act of 1887, s. 7.
(*s*) Act of 1887, ss. 13, 14.
(*t*) Sect. 17.
(*u*) Sect. 22.
(*x*) Act of 1852, s. 45.
(*y*) Act of 1852, s. 48.
(*z*) Act of 1858, s. 14.
(*a*) Act of 1852, s. 48.
(*b*) Act of 1887, s. 6.
(*c*) Act of 1852, s. 30.

Customary freeholds.

Customary freeholds are held according to the custom of the manor, but not at the will of the lord, and pass by surrender and admittance, or by deed and admittance, according to the custom, and in some manors they will pass by deed *or* surrender (*d*).

III. *The disabilities of certain persons in regard to the sale and purchase of land.*

Married Women.

Married Women.

A woman married before the 1st January, 1883, is disabled by law from disposing of land except under the provisions of the 3 & 4 Will. 4, c. 74.

Power of disposition over lands.

Under that Act a married woman is enabled in every case, except that of being tenant in tail (for which provision is otherwise made), by deed to dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and to dispose of, release, surrender, or extinguish any estate therein, which she alone, or she and her husband in her right, might have in any such lands or money, and to release and extinguish powers as if she were a *feme sole*, provided her husband concurs in the deed, and the deed is duly acknowledged. The Act does not extend to an estate at law in copyholds in those cases in which a disposition thereof could, previously to the Act, have been effected by her, with the concurrence of the husband, by surrender (*e*). But with this exception, it extends to every kind of interest in corporeal or incorporeal hereditaments, including the proceeds of the sale of real estate directed to be sold, whether the same be an interest in possession or reversionary (*f*), but not including a reversionary interest in a debt secured on mortgage of real estate (*g*).

(*d*) Scri. Cop. 413; 1 Watk. on Cop. p. 58, note.

(*e*) 3 & 4 Wm. 4, c. 74, s. 77.

(*f*) Briggs *v.* Chamberlain, 11 Hare, 69; Tuer *v.* Turner, 20 Beav. 560; Williams *v.* Cooke, 4 Giff. 343; *In re* Durrant and Storer, 18 C. D. 108; *In re* Jakeman's Trusts, 23 C. D. 344.

(*g*) *In re* Newton's Trusts, 23 C. D. 181.

Acknowledgments how to be made.

An acknowledgment by a married woman under the above-mentioned Act must be made before a judge of the Supreme Court, or a county court judge (*h*), or before a perpetual commissioner appointed by the Lord Chief Justice of England, or a special commissioner appointed by the Court in those cases where, by reason of residence beyond seas, or ill-health, or any other sufficient cause, she is prevented from making her acknowledgment in the ordinary way (*i*). The judge or commissioner before taking the acknowledgment must examine the woman separately from her husband to ascertain whether she freely and voluntarily consents thereto (*k*), and when the deed has been acknowledged, he must sign a memorandum, to be indorsed on or written at the foot or in the margin of the deed, stating the acknowledgment and the separate examination (*l*).

The form of the memorandum and the practice generally with regard to acknowledgments by married women are prescribed by Rules made in December, 1882, which are set out in the Appendix to this volume.

Memorandum of acknowledgment.

When the memorandum of acknowledgment purports to be signed by a person authorized to take the acknowledgment, the deed, as regards the execution by the married woman, takes effect at the time of acknowledgment, and will be conclusively deemed to have been duly acknowledged (*m*).

As to copyholds of a married woman.

A woman married before the 1st January, 1883, and being seised at law of copyhold land acquired by her before that date can, with the concurrence of her husband, pass the estate by a surrender, on her being separately examined; but if the estate is equitable, the assurance can be either by surrender, or by a deed acknowledged by her as in the case of freeholds (*n*).

(*h*) 19 & 20 Vict. c. 108, s. 73.

(*i*) 3 & 4 Wm. 4, c. 74, ss. 79—83. By the Conveyancing Act, 1882, s. 7, one perpetual or special commissioner is substituted for two.

(*k*) Sect. 80.

(*l*) Sect. 84. The latter part of this section, and the whole of sects. 85—88 inclusive, are repealed by the Conveyancing Act, 1882, so that no certificate of acknowledgment in addition to the memorandum is now required.

(*m*) Conveyancing Act, 1882, s. 7.

(*n*) 3 & 4 Wm. 4, c. 74, ss. 77, 90.

Power of appointment vested in married woman.

A power of appointment over land given to a married woman, or to a woman who afterwards marries, can be exercised by her by an unacknowledged deed without the concurrence of her husband (*o*).

Chattels real of a married woman.

When a woman, married before the 1st January, 1883, has chattels real acquired by her before that date, her husband may, without her concurrence, dispose of them by act *inter vivos*. This power extends to reversionary and contingent interests, unless the interest is of such a nature that it cannot by possibility vest in the wife in possession during the coverture (*p*), and so far as it is not exercised, the property goes to the survivor without its being necessary to take out letters of administration. If the wife's interest in her chattels real is only equitable, a disposition of it by the husband alone, or by both (the deed not being acknowledged), would not, it appears, bar her equity to a settlement (*q*).

Separate use.

Where a married woman has property belonging to her for her separate use under the Married Women's Property Act, 1882, or otherwise, she has an absolute power of disposition over it without her husband's concurrence, and without the necessity for any acknowledgment of the deed, as if she were a *feme sole* (*r*).

Infants.

Contract by infant for sale or purchase of land voidable.

An infant under the age of twenty-one years cannot enter into a binding contract for the sale or purchase of land, and he cannot sustain a suit for the specific performance of such a contract during his infancy (*s*). Such a contract is voidable by the infant, and on his attaining his majority, he may either avoid or affirm it as he thinks proper; and if he dies under age, his representatives have the like privilege (*t*). If an infant elects to repudiate a voidable contract, he must do so within a reasonable time after coming of age (*u*).

(*o*) 1 Sug. Pow. 182, 7th ed.
(*p*) Duberley *v.* Day, 16 Beav. 33.
(*q*) Hanson *v.* Keating, 4 Hare, 1.
(*r*) See Dissertation on "Husband and Wife," in Vol. 2.
(*s*) Flight *v.* Bolland, 4 Russ. 298.
(*t*) 4 Bac. Abr. 360; Clayton *v.* Ashdown, 9 Vin. Abr. 393, pl. 1; Dart, 19.
(*u*) Carter *v.* Silber, (1892) 2 Ch. 278.

Consequences of avoiding contract by infant on coming of age.

An infant who, on coming of age, avoids a contract, is entitled to be repaid any money paid by him in part performance (*v*), unless he has derived some advantage from the contract, and is unable to restore the other party to the same position as he would have been in if there had been no contract (*x*). In accordance with this doctrine, it is apprehended that an infant who has paid a deposit on a contract for purchase is entitled to recover it if he refuses to complete when he comes of age (*y*).

Infant cannot take advantage of his own fraud.

It has been said that equity will not allow an infant to take advantage of his own fraud. This doctrine would not make a contract for sale or purchase binding on an infant who has represented himself to be of full age, but it would probably prevent him from recovering money paid by him to the other party who was deceived by such representation (*z*).

The Infants' Relief Act, 1874 (*a*), does not apply to contracts for sale or purchase of land (*b*).

In the case of an infant tenant for life, powers of Settled Land Act may be exercised on his behalf.

Where a person who, in his own right, is seised of or entitled in possession to land is an infant, or where a tenant for life, or a person having the powers of a tenant for life under the Settled Land Act, 1882, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under the Act, the trustees of the settlement may, on his behalf, enter into a valid contract for sale (*c*).

Lunatics.

Lunatics, their acts void, except in case of executed contract, where lunacy was known to other party.

Lunatics are incapable of making a valid disposition of their property and of entering into binding contracts, subject, however, to this qualification, that a contract, whether executed or executory, entered into *bonâ fide*, is not void by reason of one of the

(*v*) See Corpe *v.* Overton, 10 Bing. 253; 3 L. J. (N. S.) C. P. 24.

(*x*) Holmes *v.* Blogg, 8 Taunt. 508; *Ex parte* Taylor, 8 D. M. & G. 257.

(*y*) The dictum in Sug. V. & P. 175, to the contrary seems incorrect.

(*z*) *Ex parte* Unity, &c. Association, 3 D. & J. 63; *In re* Jones, 18 C. D. 109.

(*a*) 37 & 38 Vict. c. 62.

(*b*) Duncan *v.* Dixon, 44 C. D. 211.

(*c*) 45 & 46 Vict. c. 38, ss. 59, 60.

parties having been at the time of unsound mind, where such unsoundness is not known to the other party; and this doctrine seems to apply to sales, mortgages, and other dealings with land or other property for valuable consideration (*d*).

Lunatic's property may be sold, mortgaged, leased, &c., by the committee by order of judge in lunacy.

When a person has been found lunatic by inquisition, and in certain other cases where it is proved to the satisfaction of the judge that a person is of unsound mind and incapable of managing his affairs, although not found a lunatic by inquisition, the judge in Lunacy may, under the Lunacy Act, 1890 (*e*), order any property of the lunatic to be sold, mortgaged, dealt with, or otherwise disposed of in order to raise money for any of the purposes therein mentioned (*f*). The judge may also by order authorize and direct the committee of the lunatic's estate, or, in the case of a person not found a lunatic by inquisition, such other person as the judge may direct, to sell or make exchanges or partitions, or grant leases of any property belonging to the lunatic, to surrender and accept surrenders of leases, to perform any contracts relating to the property of the lunatic entered into by him before the lunacy, and to exercise any power vested in the lunatic for his own benefit (*g*).

Sale moneys, &c., to remain in equity real or personal estate according to nature of property sold.

In the case of any sale, mortgage, or other disposition of a lunatic's real property, the moneys arising thereby which are not applied under the powers of the Act, belong to the lunatic and his heirs, executors, administrators, devisees, legatees, and assigns for the same interest as he or they would have had in the property if such sale, &c., had not been made, and will be real or personal estate according to the nature of the property sold, &c. (*h*).

Committee may execute deeds.

The committee of the estate, or such person as the judge approves, may, in the name and on behalf of the

(*d*) Molton *v.* Camroux, 4 Exch. 17; Elliott *v.* Ince, 7 D. M. & G. 478; Imperial Loan Co. *v.* Stone, (1892) 1 Q. B. 599.

(*e*) 53 Vict. c. 5, s. 116.

(*f*) Sect. 117.

(*g*) Sect. 120. It has been held that under this section and sect. 117 the judge may sanction a sale in consideration of a perpetual rentcharge. *In re* Ware, (1892) 1 Ch. 344.

(*h*) Sect. 123.

lunatic, execute and do all such assurances and things for giving effect to any sale, &c., as the judge directs (*i*).

Where a tenant for life, or a person having the powers of a tenant for life under the Settled Land Act, is a lunatic, the committee of his estate may, under an order of the judge in lunacy, exercise the powers of the Act in his name and in his behalf (*k*). Sales where lunatic is tenant for life.

The judge in lunacy has jurisdiction, in the administration of the lunatic's estate, to lay out personal estate in the purchase of land; but it is the practice in such cases to insert in the conveyance a declaration that the land purchased shall be considered part of the lunatic's personal estate. The validity of such a declaration was upheld by the House of Lords in a recent case on the ground that when trustees without authority invest trust money in the purchase of land, the interest of the *cestui que trust* remains in equity personal estate, and that the Court, if it chooses, may make it a condition of a similar investment on their part that the lunatic's right shall be the same as if it had been made without authority (*l*). When personal estate of lunatic laid out in purchase of land, it is usual to declare that land shall be personal estate in equity.

In accordance with this principle, on an enfranchisement of a lunatic's copyhold land, the rules of descent as to which were different from those as to the descent of the freehold, the Court made a declaration that on the death of the lunatic intestate the heir-at-law should hold the land in trust for the persons who would have been customary heirs if it had not been enfranchised (*m*).

Trustees, and persons in a fiduciary character.

Persons acting in a fiduciary character, such as trustees, agents, secretaries of societies, committees of lunatics, executors, the trustee of a bankrupt, &c., are unable to purchase the property which they are entrusted or empowered to sell, and the same rule would apply to a mortgagee with a power of sale, or to Trustees, &c.

(*i*) Sect. 124.
(*k*) Settled Land Act, 1882, s. 62.
(*l*) Att.-Gen. *v.* Marquis of Aylesbury, 12 App. Cas. 672.
(*m*) *Re* Ryder, 20 C. D. 514.

persons selling, not in virtue of their own beneficial estate, but under a discretionary power for the benefit of others; but this rule does not apply to a purchase by a mortgagee from the mortgagor, or by a mere *dry* trustee from his *cestui que trust* (*n*), or to a sale by a mortgagee to a company of which he is a member (*o*).

Solicitors and others standing in a confidential relation.

If a parent purchases from his child, or a guardian from his ward who has only lately come of age, or a solicitor, or agent, or other person in a confidential relation from his client, the sale is not necessarily void, but in all such cases the Court very jealously examines into the fairness of the transaction, and it rests with the purchaser to prove it, and that the consideration is adequate (*p*); and in a case where the vendor's legal agent purchased, nominally for another, but really for himself, the mere concealment of the fact that he was the real purchaser was held sufficient to vitiate the sale, even if fair in other respects (*q*). But proceedings to set aside a sale on the ground of confidential relation between the parties ought to be instituted within a reasonable time (*r*). If the sale is set aside, the purchaser is, of course, entitled to have back his purchase-money; but in a case where the purchaser was a solicitor, it was held that he must prove its payment by more conclusive evidence than the acknowledgment in the deed and a memorandum indorsed upon it (*s*).

As to gifts to solicitors.

A gift *inter vivos* from a client to his solicitor, made pending that relation, cannot be sustained (*t*), and the same rule applies to other confidential relations. But if the donor intentionally abides by the gift after the

(*n*) Parkes *v.* White, 11 Ves. 226; Knight *v.* Majoribanks, 2 Mac. & G. 10; Martinson *v.* Clowes, 21 C. D. 857.

(*o*) Farrar *v.* Farrar (Limited), 40 C. D. 395.

(*p*) Edwards *v.* Meyrick, 2 Hare, 63; Jones *v.* Thomas, 2 Y. & C. Exch. 498; Holman *v.* Loynes, 23 L. J. Ch. 529; King *v.* Savery, 1 Sm. & Giff. 271; Savery *v.* King, 5 H. L. Ca. 627; Gresley *v.* Mousley, 1 Giff. 450; Pearson *v.* Benson, 28 Beav. 598; Gibbs *v.* Daniel, 4 Giff. 1; Dalby *v.* Wonham, 33 Beav. 154.

(*q*) McPherson *v.* Wall, 3 App. Ca. 254.

(*r*) Marquis of Clanricarde *v.* Heming, 30 Beav. 175.

(*s*) Gresley *v.* Mousley, 3 De G. F. & J. 433.

(*t*) Hatch *v.* Hatch, 9 Ves. 292; Billage *v.* Southee, 9 Hare, 534; Tomson *v.* Judge, 3 Drew. 306; Morgan *v.* Minett, 6 C. D. 638.

confidential relation has ended, it cannot be impeached after his death (*u*). Nor does this rule apply to a gift by will, because it is the province of the Court of Probate to determine the question of fraud or undue influence as affecting any particular bequest, and, if a will is once admitted to probate, a court of equity could only interfere by fixing a trust on the legacy in question, which it would not do merely because of the existence of the relation of solicitor and client (*x*).

Aliens.

Aliens.

Prior to the "Naturalization Act, 1870" (*y*), an alien might purchase, but on office found the land went to the Crown (*z*). And where lands were devised to a trustee for an alien, the trust was executed for the benefit of the Crown (*a*). Under the last-mentioned Act, real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject, and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject. The Act contains provisions enabling British subjects in certain cases to become aliens, and enabling aliens in certain cases to resume British nationality, and it also contains provisions as to the national status of married women and children to the following effect:—1. A married woman will be deemed to be a subject of the State of which her husband is for the time being a subject. 2. A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, may obtain a certificate of re-admission to British

Capacity of an alien as to property.

(*u*) Mitchell *v.* Homfray, 8 Q. B. D. 587.

(*x*) Hindon *v.* Weatherill, 5 D. M. & G. 301. See also Walker *v.* Smith, 29 Beav. 394.

(*y*) 33 Vict. c. 14.

(*z*) Co. Litt. 2 b.

(*a*) Barrow *v.* Wadkin, 24 Beav. 1, dissenting from V.-C. Stuart, who held otherwise in Rittson *v.* Sturdy, 3 Sm. & Giff. 230.

nationality. 3. Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of the Act, every child of such father or mother who, during infancy, has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, will be deemed to be a subject of the State of which his father or mother has become a subject, and not a British subject. 4. Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who, during infancy, has become resident in the British dominions with such father or mother, will be deemed to have resumed the position of a British subject to all intents. 5. Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who, during infancy, has become resident with such father or mother in any part of the United Kingdom will be deemed to be a naturalized British subject.

Traitors and Felons.

Forfeiture and escheat for treason and felony at common law.

By the common law, the real and personal property of a person convicted of treason or felony was forfeited to the Crown, either on attainder or on conviction according to the nature of the property; but as regards freehold land the forfeiture was for a limited period only, subject to which the land went to the lord by escheat. Forfeiture and escheat as regards land had relation back to the commission of the offence. Moreover, the blood of a person attainted for treason or felony was supposed to be corrupted, so that he could not inherit land (*b*).

Corruption of blood.

Forfeiture and escheat abolished.

Attainder, corruption of blood, forfeiture, and escheat for treason or felony are abolished by the Act 33 & 34 Vict. c. 23, as from the 4th July, 1870 (*c*).

(*b*) 4 Step. Bl. 544 *et seq.* (*c*) Sect. 1.

Under that Act, when a person is convicted of treason or felony, and judgment of death or of penal servitude is pronounced or recorded against him, he becomes incapable of alienating or charging any property, or making any contract, so long as he remains subject to the operation of the Act (*d*). The custody and management of his property is committed to an administrator to be appointed by Her Majesty, or by a person authorized in that behalf by Her Majesty's sign manual, and in whom all the real and personal property belonging to him at the time of his conviction, or acquired by him while he remains subject to the operation of the Act, vests, and who has absolute power to let, mortgage, sell, convey, and transfer it (*e*). On the death or bankruptcy of a convict, or on his having undergone the full term of penal servitude, or obtaining a pardon, he ceases to be subject to the operation of the Act, and thereupon all the property remaining vested in the administrator has to be restored to him or his representatives (*f*). Property acquired by a convict while at large under a licence is excepted from the operation of the Act (*g*). If no administrator is appointed, the justices of the peace may appoint an interim curator (*h*).

Consequences of conviction according to present law.

Power of administrator of convict's property.

Interim curator.

Corporations.

Land cannot be assured to or for the benefit of or acquired by or on behalf of any corporation in mortmain, otherwise than under the authority of a licence from Her Majesty, or of a statute for the time being in force; and if any land is so assured otherwise than as aforesaid, it is forfeited to Her Majesty from the date of the assurance, subject to certain rights of escheat in favour of the mesne lord (if any) (*i*).

Corporation can acquire land only by licence from the Crown or under statute.

A joint stock company registered under the Companies Act, 1862, is thereby empowered to hold lands (*k*),

Joint stock company may hold land.

(*d*) Sects. 6, 8.
(*e*) Sects. 9, 10, 12.
(*f*) Sects. 7, 18, 29.
(*g*) Sect. 30.
(*h*) Sect. 21.
(*i*) 51 Vict. c. 42, Part I.
(*k*) 25 & 26 Vict. c. 89, s. 18.

subject to a restriction, as regards companies formed for the purpose of promoting art, science, religion, charity, or any other like object not involving the acquisition of gain by the company or the individual members thereof, that they cannot, without the sanction of the Board of Trade, hold more than two acres (*l*).

Corporations entitled to hold land may alienate unless restricted by statute.

A corporation entitled by statute or licence from the Crown to hold land has, at the common law, a general right of alienation (*m*); but this right has as regards ecclesiastical and municipal corporations, and in certain other cases, been restricted by statute.

Contracts by corporations to be under common seal.

As a general rule, a contract by a corporation must be under their common seal. But this rule has been modified as to public companies formed under the Companies Clauses Act, 1845 (*n*), and also as to companies formed under the Companies Act, 1862. The former Act enables the directors, or any two of them, to sign a contract on behalf of the company. And by the Companies Act, 1867 (*o*), it is provided, with regard to companies formed under the Act of 1862, that any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company.

Exceptions in case of companies formed under the Companies Clauses Act or the Companies Act, 1862.

IV. *The form and ordinary parts of a deed of conveyance.*

The ordinary parts of a deed of conveyance are the names and descriptions of the parties, the recitals (if any), the operative part (including the consideration, the conveyance itself, the parcels, and the *habendum*), and the covenants, if any are required.

Recitals.

The recitals in a purchase deed should be as few and simple as possible. If the vendor is seised in fee, a

(*l*) Sect. 21.
(*m*) Mayor of Colchester *v.* Lowton, 1 V. & B. 226.
(*n*) 8 & 9 Vict. c. 16, s. 97.
(*o*) 30 & 31 Vict. c. 131, s. 37.

recital is unnecessary (*p*), but if the property was conveyed to him to uses to bar dower, it is usual to recite the conveyance. So also if the vendor is a trustee for sale, the instrument by which the trust is created should be recited, and it should also be shown by the recitals that the vendor has made the sale in accordance with the trust; but where the trust authorizes a sale either by private contract or public auction, and the property has been sold by auction, the deed of conveyance need not refer to the auction, but may recite generally that the vendor has agreed to sell. Where the vendor is conveying less than an unincumbered fee simple, the recitals should show the precise nature of his interest, and the nature and amount of the charges (if any) thereon. And if any person besides the vendor and purchaser is made a party to the deed, it should be shown for what purpose his concurrence is necessary.

Consideration.

The consideration for the conveyance may be stated in the recitals or in the body of the deed. It was formerly usual for the vendor to acknowledge the receipt of the purchase-money in the body of the deed, and also by a memorandum indorsed on it. The Conveyancing Act, 1881, contains the following provisions as to receipts for consideration moneys :—

Receipt in body of deed sufficient.

A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed (*q*).

Receipt in deed or indorsed, evidence for subsequent purchaser.

A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof (*r*).

(*p*) A recital of the vendor's seisin in fee is sometimes recommended, on the ground that such a recital in a deed more than twenty years old makes the deed a good root of title, having regard to the decision of the Court in Bolton *v.* London School Board, 7 C. D. 766; but that decision cannot be relied on.

(*q*) Sect. 54.

(*r*) Sect. 55.

Receipt in deed or indorsed, authority for payment to solicitor.

Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt (*s*).

Parcels.

The property which is the subject of sale should be correctly described either in the body of the deed or in a schedule. The parcels were formerly followed by what were called "general words," and an "all the estate" clause, but these are rendered unnecessary by the following statutory provisions, which apply only so far as a contrary intention is not expressed in the conveyance:

General words now implied.

General words in conveyances of land, buildings, or manor.

A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(*s*) Conveyancing Act, 1881, s. 56. This is extended to the case of a trustee vendor by 51 & 52 Vict. c. 59, s. 2.

A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge both belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof (*t*).

Every conveyance shall by virtue of this Act be effectual to pass all the estate, right, title, interest, claim, and demand, which the conveying parties respectively have in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same (*u*).

Exceptions and reservations.

If any exceptions or reservations are intended, they will conveniently follow the description of the parcels. An exception must be of part of the thing granted, and which is existing at the time, *e. g.*, the mines under the surface. A reservation is of some right created for the first time over or in connection with the thing granted, *e. g.*, a right of way or other easements to be enjoyed over it.

Habendum.

After the parcels comes the *habendum*, the office of which is to define or limit the duration of the estate to be taken by the grantee.

Word "heirs" no longer necessary.

In order to create an estate in fee simple, it was formerly necessary to limit the land to the grantee and his heirs. The words "in fee simple" are now sufficient without the word "heirs" (*x*).

Limitation unto and to use of grantee.

Where the grantee is to take the fee simple for his own use, it is usual to limit the land unto him and to

(*t*) Conveyancing Act, 1881, s. 6. (*x*) Sect. 51.
(*u*) Sect. 63.

his use. The object is (1) to negative, in the case of a voluntary conveyance, the implication of a resulting use to the grantor; and (2) to show that the grantee is to take the legal estate by the common law without any use being engrafted on it under the Statute of Uses.

Limitation to two or more persons creates joint tenancy at law.

What constitutes a joint tenancy or tenancy in common in equity.

A limitation to two or more persons in fee simple makes them joint tenants at law unless words importing a tenancy in common are added; and the grantees will be joint tenants in equity also, if they have paid the purchase-money in equal shares (*y*); but if their contributions are of unequal amount, they will be considered in equity as tenants in common in proportion to their respective contributions (*z*). And if one joint tenant lays out money in repairs or improvements (*a*), or, in the case of renewable leaseholds, for the expense of renewal, he will have a lien in equity on the land for the amount (*b*).

Conveyance to partners.

So, where a conveyance is made to two partners as joint tenants for partnership purposes, the survivor will hold the estate as to the share of the deceased partner in trust for his personal representatives. And the same principle would apply to a purchase by several persons for the purpose of a joint adventure or speculation (*c*).

Covenants for title by vendor who is beneficial owner.

A vendor who is a beneficial owner is bound to covenant for title as to his own acts and the acts of all persons through whom he derives title otherwise than as a purchaser for value; and if a vendor conveys and is expressed to convey as beneficial owner, covenants for title by him will now be implied (*d*) to the following effect:—

Statutory covenants for title.

For right to convey.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or

(*y*) Aveling *v.* Knipe, 19 Ves. 441.

(*z*) Rigden *v.* Vallin, 2 Ves. sen. 258.

(*a*) Lake *v.* Gibson, 1 Eq. Ca. Abr. 290, pl. 3; Lake *v.* Cradock, 3 P. Wms. 158; White and Tudor's Leading Cases in Equity (5th ed.), p. 199.

(*b*) Hamilton *v.* Denny, 1 Ball & B. 190.

(*c*) Lake *v.* Cradock, *ubi supra*; Morris *v.* Barrett, 3 Y. & J. 384.

(*d*) Conveyancing Act, 1881, s. 7.

knowingly suffered (*e*), the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made by, through, under, or in trust for the person who so conveys, or by through, or under any person conveying by his direction, or by, through, or under any

Quiet enjoyment.

Freedom from incumbrance.

Further assurance.

(*e*) In a recent case A. granted a lease of land, and afterwards for value took a surrender of the lease. He then conveyed "as beneficial owner" to a purchaser in fee. It was afterwards discovered that the lessee had, previously to the surrender, granted sub-leases, which remained valid. It was held that A. was not liable under the statutory covenant for title for the acts of the lessee. David *v.* Sabin, W. N. (1892), p. 115.

one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them, shall be reasonably required.

And if the property is leasehold, the following further covenant is implied, namely:—

Validity of lease.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance.

Covenant by vendor who is not beneficial owner.

A vendor who is not beneficial owner is not bound to enter into any other covenant than that he has done no act to encumber the property; and if a vendor conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, he will be deemed to covenant as follows:—

Against incumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby

or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

The Act also provides as follows:—

Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly (*d*).

Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife (*e*).

Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance (*f*).

In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land (*g*).

The benefit of a covenant implied as aforesaid shall be

(*d*) Sect. 7, sub-sect. 2.
(*e*) Sub-sect. 3.
(*f*) Sub-sect. 4.
(*g*) Sub-sect. 5.

annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested (*h*).

A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied (*i*).

Whether, on sale by trustees, covenants for title from beneficiaries can be required.

When, under a will, trustees are directed to sell for the payment of debts or for other purposes, and the purchase-money or the residue of the purchase-money (after discharging debts, or satisfying any other purposes for which the sale is to be made) is to be divided among persons who are *sui juris*, it used to be the practice of the profession to make the *cestuis que trust* parties, in order to covenant for title with reference to their respective interests; but this practice has not been adopted by the Court in sales under its decree, and it is doubtful whether in any case where trustees are empowered to give receipts (and they have this power now by statute) a purchaser can insist on the concurrence of the beneficiaries in order to have their express or implied covenants for title. If it were held that the *cestuis que trust* who are *sui juris* must concur for this purpose, their refusal to do so might render it impossible for the trustees to perform the duty imposed upon them; and yet it seems to be clear that the purchaser has bought, with the estate, only the right to such covenants as can be obtained from the vendors, who are the trustees and not the persons beneficially interested in the purchase-money (*j*).

Covenants by tenant for life.

Where a power of sale is exercised with the consent of the tenant for life, the purchaser is entitled to covenants for title from him (*k*); but Mr. Dart submits that

(*h*) Sect. 7, sub-sect. 6.
(*i*) Sub-sect. 7.
(*j*) Dart, pp. 617, 618; Cottrell *v.* Cottrell, L. R. 2 Eq. 330.
(*k*) *In re* London Bridge Acts, 13 Sim. 176; Earl of Powlett *v.* Hood, L. R. 5 Eq. 115.

although a tenant for life or other owner of a particular estate may be required to covenant in respect of his own beneficial interest, he cannot be required to covenant for title as respects the reversion beyond his own acts and the acts of persons claiming under him (*l*), and the practice has been in accordance with this opinion.

Implied covenants by husband and wife on sale of wife's estate.

On a sale by the husband and wife of the wife's estate, not being her separate property by statute or otherwise, the husband and wife should both convey as beneficial owners, so as to be liable to implied covenants for title (*m*).

What may be recovered under covenants for title.

Under the usual covenants for title the purchaser, in case of eviction, may recover the value of the land and also of houses which he had built thereon subsequently to his purchase (*n*).

Acknowledgment, &c., as to deeds.

Where the deeds are retained by the vendor, an acknowledgment of the purchaser's right to production and delivery of copies, and if the vendor is a beneficial owner an undertaking for their safe custody, should be added.

The operation and effect of such an acknowledgment and undertaking respectively are thus defined by sect. 9 of the Conveyancing Act, 1881:

Effect of acknowledgment of right to production of documents.

(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section

(*l*) Dart, p. 619, 6th edition.
(*m*) Conveyancing Act, 1881, s. 7. sub-s. 3.
(*n*) Binney *v.* Hopkinson, 27 Beav. 565.

by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production, or by any one by him authorized in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and

the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

Effect of undertaking for safe custody.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

V. *The law as to covenants running with the land, restrictive covenants, and implied easements.*

When covenants run with the land.

Covenants relating to land, if entered into with a person having an estate therein, are said to run with the land, *i. e.*, the benefit of them passes to every successive transferee of the land, provided that he is in of the same estate as the original covenantee (*o*). Covenants for title, and covenants to indemnify land against charges on it, are instances of covenants of this kind. And it is not necessary in order to make the benefit of a covenant run with the land that the word "assigns" or even (since the Conveyancing Act, 1881 (*p*)) "heirs" be used.

Covenant will run with rentcharge, *semble*.

Whether the benefit of a covenant entered into by the grantor of a rentcharge to pay it runs with the rentcharge is doubtful, but there seems no reason in principle why it should not (*q*).

If lands are conveyed to uses, covenants in order to run with the land should be entered into with the grantee to uses (*r*).

Burthen of covenant will not run at law except as between landlord and tenant;

Whether the burden of a covenant entered into by the owner of land can be made to run with it at law, so as to be enforceable against an assign of the covenantor, has been much discussed. The better opinion seems to be that it cannot, except in cases of landlord and tenant, or where the so-called covenant is in fact the grant of an easement (*s*).

nor in equity except where the covenants are restrictive or negative.

Equity will not interfere to enforce a covenant which cannot be sued on at law, unless it comes within the class of what are called restrictive or negative covenants, and in particular will not enforce

(*o*) Spencer's case, 1 Smith's L. C. 22.

(*p*) Sect. 58.

(*q*) The affirmative was held by Holt, C. J., in Brewster *v.* Kidgell, 12 Mod. 166, and the negative by Lord Ellenborough in Milnes *v.* Branch, 5 M. & S. 411. Lord St. Leonards agrees with Holt, C. J., Sug. V. & P. 590.

(*r*) Roach *v.* Wadham, 6 East, 289. In this case the question was as to the burden of a covenant, but the principle applies to the benefit also.

(*s*) Ansterbury *v.* Corp. of Oldham, 29 C. D. 750. Cooke *v.* Chillcott, 3 C. D. 694, may be considered as overruled, so far as it appears to be an authority for the contrary doctrine. In Roach *v.* Wadham, *ubi supra*, the question was not determined.

against an assignee of the covenantor a covenant to build, or repair, or insure, or do any act involving the expenditure of money (*t*).

But as regards restrictive or negative covenants, *e. g.*, covenants not to build on land, or to use it only in a particular manner, equity will interfere by injunction against the original covenantor, or any person claiming under him, either as a volunteer or as purchaser for valuable consideration with notice of the covenant, including an underlessee (*u*), to restrain him from doing any act which would be a breach of the covenant (*x*); and he cannot protect himself on the ground of want of notice by not investigating the title when the proper investigation of it would have disclosed the restrictive covenant (*y*).

Breach of restrictive covenant will be prevented by injunction as against the assignee of covenantor with notice.

Restrictive covenants are generally intended to prevent some adjoining land belonging to the covenantee from being depreciated by the acts prohibited. If the covenantee afterwards conveys to another the whole or part of the adjoining land, the benefit of the covenant will pass in equity to the grantee if it appears from the deed, or can be inferred from the circumstances, that it was the intention of the parties that it should so pass, but not otherwise (*z*). And such an

Restrictive covenants, by whom they can be enforced.

(*t*) Haywood *v.* Brunswick, &c. Co., 8 Q. B. D. 403; London and South Western Rail. Co. *v.* Gomm, 20 Ch. D. 586.

(*u*) Hall *v.* Ewin, 37 C. D. 78.

(*x*) Mann *v.* Stephens, 15 Sim. 377; Tulk *v.* Moxhay, 2 Phil. 774; 11 Beav. 571; Coles *v.* Sims, 5 De G. M. & G. 1. In Catt *v.* Tourle, 4 Ch. 654, it was held, that a covenant entered into by a purchaser in fee with his vendor, that the latter should have the exclusive right of supplying beer to any public-house erected on the purchased land, though in terms positive, was in substance negative, and that the Court would interfere by injunction to restrain an assignee of the covenantor from acting in contravention of it. This decision goes beyond the other authorities, which seem to confine the doctrine to covenants relating to the use and enjoyment of the land. See the observations of Lord Selborne in Earl of Zetland *v.* Hislop, 7 App. Ca. 447.

(*y*) Wilson *v.* Hart, L. R. 1 Ch. 463; Nicoll *v.* Fenning, 19 C. D. 258.

(*z*) Renals *v.* Cowlishaw, 9 C. D. 125; 11 C. D. 866; Master *v.* Hansard, 4 C. D. 718. In Renals *v.* Cowlishaw, James, L. J., is reported to have said, that "to enable an assignee to take the benefit of a restrictive covenant, there must be something in the deed to define the property for the benefit of which they were entered into." Notwithstanding this dictum, it is apprehended that if the deed is silent on the point, extrinsic evidence would be admissible to show that the

intention will more readily be presumed where the sale comprises the whole of the land than where it comprises a part only (*a*).

Where there is building scheme.

Where there is a building scheme for the sale of an estate in lots according to some defined plan, and it is part of the arrangement that the purchasers shall enter into restrictive covenants for their mutual benefit, in such case the covenants, though expressed to be entered into with the vendor only, will be mutually enforceable in equity by and against all persons who come in as purchasers under the scheme; and that is so, although some of the lots are unsold at the first sale, and are afterwards sold subject to the same conditions (*b*).

Question discussed whether covenants are intended for mutual benefit of purchasers and vendor, or for vendor only.

But whether the covenants are intended for the mutual benefit of the purchasers, or for the benefit and protection of the vendor only, is always a question of fact depending on the language of the deed or the conditions of sale, or the other circumstances, and, in the absence of any express statement on the point, will depend mainly on whether the sale comprises the whole of the vendor's estate in the particular place. If it does, the presumption would be that the covenants are intended for the benefit of each of the purchasers as against the others. If, on the other hand, a part of the property is retained by the vendor, the *primâ facie* inference would be that the covenants are for the protection of himself in respect of the retained land (*c*).

The proper plan to be pursued to prevent all question.

In order to prevent all question it is desirable, where it is intended that covenants of this kind shall be enforceable not only by the vendor, but by all the

covenantee was in fact the owner of certain adjoining lands, from which the Court or jury might infer that the covenants were entered into for the benefit of that land.

(*a*) Keats *v.* Lyon, 4 Ch. 218; and the observations in that case on Child *v.* Douglas, Kay, 560.

(*b*) Whatman *v.* Gibson, 9 Sim. 196; Coles *v.* Sims, Kay, 56; Western *v.* McDermot, 1 Eq. 499; 2 Ch. 72; Jay *v.* Richardson, 30 Beav. 563; Nicoll *v.* Fenning, 19 C. D. 258; Collins *v.* Castle, 36 C. D. 243; Mackenzie *v.* Childers, 43 C. D. 265.

(*c*) Nottingham, &c. Company *v.* Butler, 15 Q. B. 261; 16 Q. B. 778; Collins *v.* Castle, *ubi supra;* Everett *v.* Remington, (1892) 3 Ch. 148.

purchasers *inter se*, either to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes (*d*), or to insert in the conveyance to each purchaser not only covenants by him with the vendor, but also a declaration that he shall be entitled to the benefit of the similar covenants entered into by the other purchasers, and that, as regards any lots not already sold and conveyed, the same shall be subject to the like restrictions.

Notice of restrictive covenants by vendor should be indorsed on his title deed.

Where a vendor enters into restrictive covenants with intent to bind all future owners of the land affected thereby, the purchaser should see that notice of the deed containing the covenants is indorsed on some principal title deed retained by the vendor, so that subsequent purchasers from the vendor will have notice of them.

Equity will not interfere when there has been delay amounting to acquiescence.

Equity will refuse to interfere to prevent a breach of restrictive covenants where there is such delay on the part of the covenantee in taking proceedings as to amount to acquiescence (*e*).

Under lease covenants run with land both as to burthen and benefit.

As between landlord and tenant, covenants relating to the thing demised run with the land at law both as to the burden and the benefit, and for this purpose a covenant by the lessee of a public-house to take all his beer from the lessor is a covenant relating to the thing demised (*f*). But not so if the covenant relates to property not demised. Thus where a lessor covenanted with the lessee, his executors, administrators, and assigns, that he would give a right of pre-emption to the lessee, his executors, administrators, and assigns, in respect of a certain piece of adjoining land, the benefit of this covenant was held not to accrue to the assignee of the lease, though named (*g*).

When purchaser must covenant with vendor.

Whenever the vendor sells property subject to certain liabilities, or covenants, for the observance of which he is personally liable, and it is a part of the

(*d*) Whatman *v.* Gibson, 9 Sim. 196.

(*e*) Duke of Bedford *v.* British Museum, 2 M. & R. 552; Sayers *v.* Collyer, 28 C. D. 103.

(*f*) Luker *v.* Dennis, 7 C. D. 227.

(*g*) Collison *v.* Lettson, 6 Taunt. 224.

arrangement that the purchaser shall take the land subject to the same restrictions, the purchaser must enter into a covenant with the vendor to abide by the same (*h*).

Implied easements.

Conveyance to purchaser passes apparent and continuous easements.

A conveyance of land passes all easements legally appurtenant to it; and where the vendor is the owner of and retains the adjoining land, the conveyance will also pass by force of sect. 6 (sub-sect. 2) of the Conveyancing Act, 1881 (*i*), or even without the aid of that section (*k*), such apparent and continuous easements over the land retained as are necessary to the convenient enjoyment of the property conveyed, and have been, and at the time of conveyance are, used and enjoyed by the vendor for the benefit of that property. And this is more particularly the case if the alleged easement was formerly an actual easement which had become extinguished by unity of possession (*l*).

When an easement of light passes to a purchaser,

or a right of way over land retained by vendor.

In accordance with this doctrine a conveyance to a purchaser of a house, which has windows overlooking land retained by the vendor, passes by implication an easement of light, which precludes the vendor from building on the land so as to obscure the light; and a conveyance of land, the ordinary and only convenient access to which is over the land retained by the vendor, passes a right of way over that land, although the way is not of necessity (*m*). But it is always a question depending on evidence whether there is an apparent easement or not. If the owner of two closes, A. and B., is in the habit of using a road over A. to go to B., this user is *primâ facie* for his own convenience while owner of both, which convenience will cease to exist when the ownership is severed, and a right to use the road would not pass by a conveyance of close B. to a

(*h*) Moxhay *v.* Inderwick, 1 De G. & S. 708.

(*i*) James *v.* Plant, 4 Ad. & El. 749; Kay *v.* Oxley, L. R. 10 Q. B. 360. In this case the deed contained the general words now implied in every conveyance by the Act of 1881.

(*k*) Wheeldon *v.* Burrows, 12 C. D. 31.

(*l*) James *v.* Plant, *ubi supra.*

(*m*) Brown *v.* Alabaster, 37 C. D. 490.

purchaser, unless it could be shown that there was no other reasonably convenient access thereto, or that there are other circumstances from which it may be inferred that the road was used as an appurtenant to B., and not as a mere incident of the joint ownership (*n*). And generally it may be said that in order to establish an apparent easement over land retained by a vendor for the benefit of property conveyed to a purchaser, it must be shown that the user on which the claim is founded has taken place under circumstances affording a reasonable expectation that it will be continued after the ownership is severed (*o*).

No implied reservation of an easement to grantor.

As a general rule there is no implied reservation of an easement in favour of the grantor for the benefit of the property retained by him corresponding to that which arises in favour of the grantee for the benefit of the property conveyed, except in the case of a way of necessity. If, therefore, an owner of a house, and of land over-looked by the house, sells and conveys the land, but retains the house, he cannot prevent the purchaser from building on the land so as to obstruct the light to the house (*p*). If, however, in the latter case the land and house had been sold contemporaneously to different purchasers, the purchaser of the house would be entitled to an easement of light as against the purchaser of the land (*q*). And the same rule applies to devises by will of the land and house to different persons (*qq*).

VI. *Conveyances of land with an exception of mines and minerals, or of mines and minerals without the surface, and the mutual rights and obligations of the owners of the mines and of the surface in such cases.*

Conveyance of land passes *primâ facie* the mines.

A conveyance of land passes not only the surface but also all mines and minerals under the surface,

(*n*) Thompson *v.* Waterlow, L. R. 6 Eq. 36, as explained in Kay *v.* Oxley, *ubi supra*.

(*o*) Birmingham, &c. Rail. Co. *v.* Ross, 38 C. D. 299.

(*p*) Wheeldon *v.* Burrows, *ubi supra*.

(*q*) Allen *v.* Taylor, 16 Ch. D. 355.

(*qq*) Phillips *v.* Low, (1892) 1 Ch. 47.

unless the contrary is expressed in the deed, or unless the conveyance is made under the provisions of some statute which expressly excludes them, *e.g.*, a conveyance to a railway company (*r*).

Meaning of "minerals" or "mines and minerals" in a grant or exception.

A grant or exception in a deed of "minerals," or of "mines and minerals," includes all such substances as can be got from underneath the surface of the earth for the purpose of profit, without any reference to the mode of working them, unless there is something in the context or in the nature of the transaction to induce the Court to give a more limited meaning (*s*).

Meaning of "mines" alone.

The word "mines" taken alone signifies primarily underground excavations made for the purpose of getting minerals, as distinguished from quarrying or open working. But it is ordinarily used in conveyances as meaning the strata or beds in which minerals lie, and it is a question of construction to be gathered from the language of the deed and the other circumstances whether in any given case a conveyance or reservation of "mines," without the words "and minerals," is confined to strata of such minerals as can be got by underground working, or whether it includes also substances, *e.g.*, building stone or clay, which can be only got by quarrying or open working (*t*).

Whether an exception of mines carries the ownership of the strata or an easement only, a question of construction.

It is also a question of construction whether an exception of mines is an exception of the strata, so as to leave the grantor in the ownership of those strata as a separate tenement which he may use for any purpose he thinks fit, *e.g.*, to make a road through them for the conveyance of the produce of adjoining mines (*u*); or an exception only of the minerals, in which case the grantor has a right to get the minerals, but not to use the strata in which they are for any other purpose (*v*).

Exception of

A grant or exception of minerals carries with it the

(*r*) 8 Vict. c. 20, s. 77.

(*s*) Hext *v.* Gill, L. R. 7 Ch. 699; Earl of Jersey *v.* Neath Guardians, 22 Q. B. D. 559.

(*t*) Bell *v.* Wilson, L. R. 1 Ch. 303; Midland Rail. Co. *v.* Haunchwood Brick and Tile Co., 20 C. D. 552; Lord Provost of Glasgow *v.* Farie, 13 App. Cas. 657; Midland Rail. Co. *v.* Robinson, 15 App. Cas. 19.

(*u*) Duke of Hamilton *v.* Graham, L. R. 2 H. L. 166.

(*v*) Ramsay *v.* Blair, 1 App. Cas. 701.

right to work them by sinking pits and shafts and putting up the necessary machinery, and to enter upon and use so much of the surface as is necessary and reasonable for that purpose, but does not entitle the mine owner to destroy or seriously injure the surface, unless such a power is expressly reserved (*x*).

minerals includes right to work them.

If the owner of land grants to another a right to get the minerals, this will not be deemed to confer an exclusive right, unless the language is clear and explicit. And when the right is not exclusive, the owner of the land has a right to work them, so long as he does not disturb the grantee in any working which he is carrying on at the time (*y*).

Grant of right to get minerals does not prevent owner of land from working them also.

Where the ownership of the mines is separate from that of the surface, *primâ facie* the mine owner is bound to leave sufficient support for the surface, and a grant or reservation of express power to work and get the minerals, and for that purpose to sink shafts, &c., making compensation for damage to the surface, does not of itself relieve the mine owner from the obligation to support the surface; because sufficient effect may be given to the compensation clause by holding it to apply to damage caused by the sinking of the shafts, and other surface works authorized by the deed (*z*). But if it appears clearly on the face of the instrument that the grant of the mines is intended to carry with it the right so to work them as to cause a subsidence, there is nothing illegal in such a grant, and it is in every case a question of construction whether this is or is not the intention of the deed (*a*). Thus, in a case where, on a grant of land for the erection of a cotton mill, there was an exception and reservation of all the mines and minerals, with power to take the same at pleasure, but without entering

Right of owner of surface to support from the subjacent mines.

(*x*) Hext *v.* Gill, 7 Ch. 699; Bell *v.* Wilson, L. R. 1 Ch. 303.

(*y*) Duke of Sutherland *v.* Heathcote, (1892) 1 Ch. 476.

(*z*) Humphries *v.* Brogden, 12 Q. B. 739; 20 L. J. Q. B. 10; Harris *v.* Ryding, 5 M. & W. 60; 8 L. J. (N. S.) Exch. 181; Smart *v.* Morton, 24 L. J. Q. B. 260; Roberts *v.* Haines, 25 L. J. Q. B. 353; Hext *v.* Gill, L. R. 7 Ch. 699.

(*a*) Rowbotham *v.* Wilson, 27 L. J. Q. B. 61; 8 H. L. C. 348; Duke of Buccleuch *v.* Wakefield, L. R. 4 H. L. 377.

upon the surface, so that compensation be made for all damage to the buildings by the exercise of any of the excepted powers, it was held that the mine owner might work so as to injure the buildings, because, as he was restrained from entering on the surface, the damage contemplated by the compensation clause must be damage by subsidence (*b*).

VII. *Other matters relating to the conveyance.*

As to outstanding legal estate.

The vendor is bound to get in at his own expense any outstanding legal estate; but if it appears that a legal estate which has not been actually got in began to be outstanding many years ago, the question arises whether it has not ceased to be subsisting under the operation of the Statute of Limitations. If the relation between the holders of the legal and beneficial estates has been that of trustee and *cestui que trust* upon an express trust, or of mortgagee and mortgagor, no length of possession by the beneficial owner will have barred the legal right of the legal owner, the case being within the exception at the end of sect. 7 of 3 & 4 Will. 4, c. 27. But if the legal owner has not been an express trustee or mortgagee, or has ceased to be such, the beneficial owner will have been a tenant at will within the meaning of that section, and will have acquired a good legal title at the end of thirteen years from the time when the tenancy at will began (*c*). In a case where a legal mortgage was paid off but no reconveyance was executed, it was held that the mortgagee was neither a trustee nor a mortgagee after the money was paid, and consequently that his legal right was barred at the end of thirteen years from that time (*d*).

When a conveyance of the legal estate will be presumed.

Independently of the operation of the Statute of Limitations, a conveyance of the legal estate will be presumed where there have been dealings by the

(*b*) Aspden *v.* Siddon, L. R. 10 Ch. 394.
(*c*) 37 & 38 Vict. c. 57, s. 1; 3 & 4 Will. 4, c. 27, s. 7.
(*d*) Sands *v.* Thompson, 22 C. D. 614.

equitable owner inconsistent with the supposition of the legal estate being outstanding, as where the property has been sold, mortgaged, and settled from time to time without any notice having been taken of the outstanding legal estate, or where the property has been dealt with in such a manner as to lead to the inference that the legal estate must have been at the time in the beneficial owner (*e*), or where the legal estate has been directed to be conveyed to a particular person at a particular time, and a long time has elapsed since the conveyance ought to have been made, and the person to whom it ought to have been made has been in possession the whole time (*f*).

Satisfied terms.

It was formerly the practice on a purchase, when it appeared that the property was subject to a term of years created for purposes which had become satisfied, to keep the term alive by assigning it to a trustee for the purchaser to attend the inheritance and protect it from mesne incumbrances. This practice was put an end to by the Act 8 & 9 Vict. c. 112, which in effect enacts that (with an exception intended to protect existing interests) all terms of years which by express declaration or construction of law should on the 31st day of December, 1845, be attendant on the inheritance, or which becoming satisfied after that date should either by express declaration, or by construction of law, become attendant on the inheritance, should absolutely cease and determine. The Act extends to freeholds and such customary lands as will pass by deed, or deed and admittance, and not by surrender (*g*).

Act for dispensing with their assignment.

Purchaser should ascertain that term is satisfied.

It must be borne in mind, however, that the term will not cease under the Act, unless the term is *satisfied*, and it will not be held to be satisfied so long as there remains any useful purpose beneficial to the owner of the term, and consistent with the trusts on which the term is directed to be held. Thus, where (*h*) a mort-

(*e*) Noel *v.* Bewley, 3 Sim. 114; Emery *v.* Grocock, 6 Mad. 54.

(*f*) England *v.* Slade, 4 T. R. 682; Hillary *v.* Wallis, 12 Ves. 239.

(*g*) See sect. 3.

(*h*) Doe d. Clay *v.* Jones, 13 Q. B. 774; 18 L. J. Q. B. 260. See also Shaw *v.* Johnson, 1 Drew. & Sm. 412.

gage for a term was paid off by a person who believed himself to be owner of the fee but who afterwards was proved not to be such by reason of the existence of a deed executed after the creation of the term, and unknown to him, it was held that the payment having been made by him under a mistake, the term was not satisfied: and in another case (*i*), where a term created by way of mortgage had become vested by transfer in a trustee for the mortgagee, and the mortgagor conveyed the fee to the mortgagee in consideration of a release of the debt, but the wife of the mortgagor, although made a party, did not execute the deed, it was held that the term remained on foot as a protection against the wife's dower. So, if by a settlement the term is created for the purpose of raising portions, and the tenant for life of the settled estate pays off the charge, the term does not by such payment become satisfied for the benefit of the inheritance (*k*). Where a term would not merge in the inheritance if united in the same person, it will not be attendant when vested in a trustee.

Execution of conveyance, and receipt for purchase-money.

Whether a purchaser can insist on the vendor executing the deed in the presence of his (the purchaser's) solicitor was, until the recent Act, frequently made a question (*l*). It is now enacted that a purchaser shall not be entitled to require that the conveyance be executed in his presence or in that of his solicitor as such, but that he may at his own cost have its execution attested by some person appointed by him, who may, if he thinks fit, be his own solicitor (*m*).

Costs of conveyance.

Where there is no stipulation on the subject of expenses, the costs of the conveyance and of all matters relating thereto must be borne by the purchaser, but the expense attendant on the execution and examination of the deed by or on account of the conveying parties must be paid by the vendor (*n*). And in the

(*i*) Anderson *v.* Pignott, L. R. 8 Ch. 180.
(*k*) Hill's Trustees, 318.
(*l*) Viney *v.* Chaplin, 2 De G. & J. 468; Essex *v.* Daniell, L. R. 10 C. P. 538.
(*m*) Conveyancing Act, 1881, s. 8.
(*n*) Dart, 798; Vendor and Purchaser Act, 1874, sect. 2, r. 4.

absence of stipulation, on the purchase of a copyhold estate, the purchaser must pay the expense of the surrender and his admittance (*o*). In a case where it was stipulated that the purchaser should have proper surrenders at his expense, it was held that the fine on admittance of the heir of the vendor who had died after the contract was an extraordinary expense which must be borne by the vendor (*p*). Where the vendor agreed to surrender and assure the copyholds at his own cost, it was held that the vendor was not liable to pay the fine which became payable on the purchaser's admittance (*q*). Costs of surrender of and admission to copyholds.

If the property is subject to incumbrances at the date of the contract, they must either be got in by a separate deed at the vendor's expense before the conveyance, or if they are released by the deed of conveyance, the expenses of the purchase-deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, may be thrown on the vendor (*r*). But the purchaser would not be entitled to throw such expense on the vendor when the mortgage debts are kept on foot for the purchaser's protection (*s*). Expense of getting in incumbrances.

VIII. Stamps upon Conveyances.

By the Stamp Act, 1891 (54 & 55 Vict. c. 39), conveyances upon the sale of any property (except Bank of England Stock and certain colonial stocks) must be stamped with the following duties:— Stamps on conveyances.

	£	*s.*	*d.*
Where the amount or value of the consideration for the sale does not exceed £5 . . .	0	0	6
And where the same exceeds £5 and does not exceed £10	0	1	0
„ „ 10 „ 15	0	1	6

(*o*) Sug. V. & P. 452.
(*p*) Paramore *v.* Greenslade, 1 Sm. & Gif. 541.
(*q*) Graham *v.* Sime, 1 East, 632.
(*r*) Sug. V. & P. 448; Reeves *v.* Gill, 1 Beav. 375.
(*s*) Dart, 471.

					£	s.	d.
And where the same exceeds £15 and does not exceed				£20	0	2	0
„	„	20	„	25	0	2	6
„	„	25	„	50	0	5	0
„	„	50	„	75	0	7	6
„	„	75	„	100	0	10	0
„	„	100	„	125	0	12	6
„	„	125	„	150	0	15	0
„	„	150	„	175	0	17	6
„	„	175	„	200	1	0	0
„	„	200	„	225	1	2	6
„	„	225	„	250	1	5	0
„	„	250	„	275	1	7	6
„	„	275	„	300	1	10	0
And where the consideration exceeds £300, then for every £50, and also for any fractional part of £50 of such amount or value . . .					0	5	0

The Act contains the following provisions as to conveyances on sale:—

Interpretation of term.

Sect. 54. For the purposes of this Act the expression "conveyance on sale" includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser or any other person on his behalf or by his direction.

How *ad valorem* duty to be calculated in respect of stock and securities.

Sect. 55. (1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance is to be charged with *ad valorem* duty in respect of the value of the stock or security.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

How consideration consisting of periodical payments to be charged.

Sect. 56. (1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period, not exceeding twenty years, so that the total amount to be paid can be previously

ascertained, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on such total amount.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years, or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.

(3.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4.) Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing the payments, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than 10*s.* (*t*).

How conveyance in consideration of a debt or subject in future payment, &c., to be charged.

Sect. 57. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration, in respect whereof the conveyance is chargeable with *ad valorem* duty.

Direction as to duty in certain cases.

Sect. 58. (1.) Where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such

(*t*) See Limmer Asphalte Paving Co. *v.* Commissioners of Inland Revenue, L. R. 7 Ex. 211.

conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration.

(2.) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3.) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

(4.) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty in respect of the consideration moving from the sub-purchaser.

(5.) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance, contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with *ad valorem* duty, in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(6.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable only with such other duty as it may be liable under any general description, but the last-mentioned duty shall not exceed the *ad valorem* duty.

Sect. 59. (*Relates to contracts for sale, and is set out verbatim in pp.* 46, 47, *supra.*)

Sect. 60. Where upon the sale of an annuity or other right not before in existence, such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for all the purposes of the Act to be deemed an instrument of conveyance on sale. As to the sale of an annuity or right not before in existence.

Sect. 61. (1.) In the cases hereinafter specified the principal instrument is to be ascertained in the following manner:— Principal instrument, how to be ascertained.

(a) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument.

(b) In other cases of copyhold or customary estates the surrender or grant, if made out of Court, or the memorandum thereof, and the copy of court roll of the surrender or grant, if made in Court, shall be deemed the principal instrument.

(c) Where in Scotland there is a disposition or assignation executed by the seller, and any other instrument is executed for completing the title, the disposition or assignation is to be deemed the principal instrument.

(2.) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly.

Any separate deed of covenant (not *being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*), made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid, is chargeable with a duty equal to the *ad valorem* duty on the consideration or mortgage money, where the *ad valorem* duty shall not exceed 10*s.*, and in any other case with a duty of 10*s.* (*u*). Separate deed of covenant.

The duplicate or counterpart of an instrument charged with duty must be stamped with the same duty as the original Duplicates.

(*u*) Schedule, under the head "Covenant."

instrument where the duty does not amount to 5*s*., and in any other case with a duty of 5*s*. Sect. 72 of the Act provides that the duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Opinion of Commissioners as to sufficiency of stamp.

Subject to such regulations as the Commissioners may think fit to make, they may be required by any person to express their opinion with reference to any executed instrument: (1) Whether it is chargeable with any duty; (2) With what amount of duty it is chargeable. If the Commissioners are of opinion that the instrument is not chargeable with duty, it may be stamped with a particular stamp denoting that it is not so chargeable. If they are of opinion that it is chargeable with duty, they are to assess the duty with which in their opinion it is chargeable, and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped (*x*). Any person dissatisfied with the assessment of the Commissioners may within twenty-one days after the assessment appeal against the assessment to the High Court (*y*).

Unstamped instrument.

Sect. 15 of the Act provides, with respect to the stamping of instruments after execution, as follows:—

(1.) Save where other express provision is in this Act made, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof on payment of the unpaid duty, and a penalty of £10, and also by way of further penalty where the unpaid duty exceeds £10, of interest on such duty at the rate of £5 per cent. per annum from the day on which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

(2.) In the case of such instruments hereinafter mentioned as are chargeable with *ad valorem* duty, the following provisions shall have effect:—

(a) The instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper *ad*

(*x*) Sect. 12. (*y*) Sect. 13.

valorem duty before the expiration of thirty days after it is first executed, or after it has been first received in the United Kingdom, in case it is first executed at any place out of the United Kingdom, unless the opinion of the Commissioners of Inland Revenue with respect to the amount of duty with which the instrument is chargeable has before such expiration been required under the provisions of this Act;

(b) If the opinion of the Commissioners with respect to any such instrument has been required, the instrument shall be stamped in accordance with the assessment of the Commissioners within fourteen days after notice of the assessment.

(c) If any such instrument executed after the 16th May, 1888, has not been or is not duly stamped in conformity with the foregoing provisions of this sub-section, the person in that behalf hereinafter specified shall incur a fine of £10, and in addition to the penalty payable on stamping the instrument there shall be paid a further penalty equivalent to the stamp duty thereon, unless a reasonable excuse for the delay in stamping, or the omission to stamp, or the insufficiency of stamp, be afforded to the satisfaction of the Commissioners, or of the Court, judge, arbitrator, or referee, before whom it is produced.

(d) The instruments and persons to whom the provisions of this sub-section are to apply are as follows:

Title of Instrument as described in the First Schedule to this Act.	Person liable to Penalty.
Bond, covenant, or instrument of any kind whatsoever	The obligee, covenantee, or other person taking the security.
Conveyance on sale	The vendee or transferee.
Lease or tack	The lessee.
Mortgage, bond, debenture, covenant and warrant of attorney to confess and enter up judgment	The mortgagee or obligee; in the case of a transfer or conveyance, the transferee, assignee or disponee, or the person redeeming the security.
Settlement	The settlor.

(3.) Provided that save where other express provision is made by this Act in relation to any particular instrument:

(a) Any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom, may be stamped at any time within thirty days after it has been first received in the United Kingdom, on payment of the unpaid duty only; and

(b) The Commissioners may, if they think fit, at any time within three months after the first execution of any instrument, mitigate or remit any penalty payable on stamping.

(4.) The payment of any penalty payable on stamping is to be denoted on the instrument by a particular stamp.

Production of documents as evidence.

Until an instrument is properly stamped, it cannot be given in evidence except in criminal cases. But if the instrument is one which may legally be stamped after the execution thereof, the officer of the Court is empowered to receive and give a receipt for the unpaid duty and the penalty required by the statutes, and a further sum of £1. And on this being done the instrument will be admitted in evidence (*z*).

What is property within meaning of Stamp Act.

The transaction, in order to require an *ad valorem* stamp as upon a conveyance, must be a sale *of property*.

An assignment of personalty was made to trustees in trust to sell, and out of the proceeds to pay themselves the debts owing to them, and then the debts due to the other creditors, and to pay over the surplus to the assignees; this assignment was held to require only a common deed stamp (*a*). A conveyance by a father to his son in consideration of natural love, &c., and also of the provision which the son had that day made by bond of £1,500 for his sister's portion, is not a sale (*b*). By a marriage settlement the uncle of the husband agreed, in consideration of the portion advanced by the lady, to pay to the trustees for the use of the husband and wife, during their joint lives, an annuity of £800: the Court held that this was not a sale, and did not require the deed to be stamped as a conveyance on the sale of

(*z*) Sect. 14.

(*a*) Coates *v.* Perry, 3 Brod. & B. 48.

(*b*) Denn *v.* Diamond, 4 B. & C. 243.

property (*c*). Where an instrument which purported to be a release of land, but which not being by deed could not operate as such, contained a stipulation not to disturb the party who intended to take the premises, it was held to operate as an agreement, and to require a stamp appropriate to such instrument (*d*). In *Warren* v. *Howe* (*e*), it was decided that a judgment debt was not property within the meaning of the Stamp Act, title "Conveyance;" but this decision has been virtually overruled (*f*). It is also clear that an assignment of a policy of assurance is a conveyance on sale of property within the Stamp Act (*g*). In *Belcher* v. *Brymer* (*h*), two persons who had entered into certain contracts with the Victualling Office, agreed to dissolve partnership, and executed a deed whereby one agreed to resign to the other all his interest in those contracts, all debts due to the concern, and all share of the partnership property, and the other agreed to pay him £50,000, at which sum his share was valued; it was held, on the authority of *Warren* v. *Howe*, that this was not a sale of property, and did not require an *ad valorem* stamp. But in a case where on a dissolution of a partnership, a deed was executed by which the retiring partner, in consideration of the sum of £17,313, part of the moneys and assets of the dissolved co-partnership, to him allowed in account as an equivalent for the value of his share, conveyed his share in the real assets to the continuing partners, the deed was held to be a conveyance upon a sale so as to require an *ad valorem* stamp (*i*); and in *Potter* v. *The Commissioners of Inland Revenue* (*k*), it was held that the assignment of the *goodwill* of a trade required such stamp. So also where on the dissolution of a partnership between two persons, the share of the retiring partner was by a deed conveyed to the other partner in consideration of £10,000, being the sum at which the share of the retiring partner was valued, this deed was held to

(*c*) Massey *v.* Nanney, 3 Bing. N. C. 478.
(*d*) 6 B. & C. 665.
(*e*) 2 B. & C. 281.
(*f*) See observations of Rolfe, B., on this point in Caldwell *v.* Dawson, 5 Ex. Rep. 1.
(*g*) Caldwell *v.* Dawson, 5 Ex. Rep. 1.
(*h*) 6 B. & C. 234.
(*i*) Phillips *v.* The Commissioners of Inland Revenue, L. R. 2 Ex. 399.
(*k*) 10 Ex. Rep. 147.

be a conveyance of property within the meaning of the Stamp Act (*l*).

Where an *ad valorem* stamp is imposed, a deed stamp is not necessary, though the former should be less in amount (*m*).

No additional stamp is necessary when the deed contains only what is incidental to the sale, as a covenant for the production of deeds or an assignment of terms to attend the inheritance (*n*).

Compound of purchase and mortgage.

If the instrument is a compound of a purchase and a mortgage, the deed must be stamped with the proper *ad valorem* duties, as on a purchase and mortgage for the specified sums.

(*l*) Christie *v.* The Commissioners of Inland Revenue, L. R. 2 Ex. 46.

(*m*) Clayton *v.* Burtenshaw, 5 B. & C. 41.

(*n*) 2 Ad. & El. N. S. 321.

No. I.

PARCELS (*to be inserted in any of the following Precedents*).

PARCELS WITH GENERAL WORDS.

1. ALL THAT piece or parcel of meadow or pasture land commonly called or known by the name of ——, situate in the parish of ——, in the county of ——, containing by admeasurement ——, or thereabouts, and bounded on the north by land of ——, and on all other sides by land of ——, which piece or parcel of land is in the occupation of ——, as yearly tenant thereof, and is delineated and coloured pink in the map or plan drawn in the margin of these presents.

1. A close of land.

2. ALL THAT messuage or dwelling-house with the outbuildings, yard, and garden thereto belonging, commonly called —— cottage, situate in —— lane, in the parish of ——, in the county of ——, and now in the occupation of ——, as yearly tenant thereof, which premises contain together by admeasurement ——, or thereabouts, and are delineated and coloured pink in the map or plan drawn in the margin of these presents.

2. A house in suburb.

3. ALL THAT messuage or dwelling-house, with the outbuildings and yard belonging thereto, being No. 4, —— street, in the parish of ——, in the county of Middlesex, and now in the occupation of ——, under a lease dated the —— day of ——, for a term of —— years, commencing from the date of the said lease, at the yearly rent of ——, which messuage and premises are delineated, &c.

3. A house in a street.

4. ALL THAT plot, piece, or parcel of ground situate in the parish of ——, in the county of ——, on the north side of a new road or street now in course of formation, and called or intended to be called —— road, which plot, piece, or parcel of ground is bounded, &c., and contains in width from east to west —— feet or thereabouts, and in depth from north to south —— feet or thereabouts, and the same is delineated and coloured

4. A plot of building land, with a house lately erected thereon, and a right of road.

PARCELS WITH GENERAL WORDS.

pink in the map or plan drawn in the margin of these presents: And also the messuage or tenement lately erected on the said plot, piece, or parcel of ground, and numbered or intended to be numbered —— in —— road aforesaid: And also full and free right and liberty in common with the owners and occupiers of the other messuages and premises in the said road or street, to pass and repass over and along the same road or street either with or without horses, carts, and carriages, at all times and for all purposes, the said ——, his heirs and assigns, paying a rateable proportion with the said other owners and occupiers, of the expense of keeping the said road or street in repair.

5. A farm and lands.

5. All that farm, with the messuage, tenement, or farm-house, barns, stables, outhouses, closes, pieces, or parcels of land belonging thereto, called —— farm, situate in the parish of ——, in the county of ——, containing together by admeasurement —— or thereabouts, and in the occupation of —— as yearly tenant thereof, all which premises are more particularly described in the schedule hereunder written, and are delineated and coloured pink in the map or plan hereunto annexed, and referred to by the said schedule.

6. A large estate, comprising manor, advowson, mansion-house, and farms.

6. All that the manor or lordship of ——, or reputed manor or lordship of ——, in the county of ——, and all that the advowson or perpetual right of presentation of and to the rectory and parish church of ——, in the county of ——: And also all that capital messuage or mansion house called —— Hall, situate in the parish of ——, with the stables, outbuildings, lawns, pleasure grounds, plantations, cottages, and pieces or parcels of land thereunto belonging, and held therewith, containing together by admeasurement —— or thereabouts, and now or late in the possession of the said (*vendor*) or his under-tenants: And also all that farm, with the messuage, tenement, or farm-house, buildings, closes, and parcels of land belonging thereto, called —— farm, situate in the said parish of ——, containing together by admeasurement ——, and now in the occupation of ——, at the yearly rent of £——: And also all that farm, &c. (*describe it in the same way*), all which capital and other messuages, farms, lands, tenements, and hereditaments (except the said manor and advowson), are more particularly

described in the schedule hereunder written, and are also delineated in the map or plan hereunto annexed and referred to by the said schedule.

PARCELS WITH GENERAL WORDS.

7. ALL THAT, &c. (*parcels as described in the court rolls*), To ALL which hereditaments hereinbefore described the said A. B. (*vendor*) was admitted tenant at a court holden in and for the said manor, on the —— day of —— (*or* "was admitted tenant out of court, on the —— day of ——").

7. Copyholds.

8. (F.) ALL SUCH and so many and such part or parts as is or are of freehold tenure of all, &c.

(C.) ALL SUCH and so many and such part or parts as is or are of copyhold or customary tenure of the hereditaments and premises hereinbefore described, and the freehold parts whereof are hereinbefore conveyed.

8. Freeholds and copyholds intermixed where they cannot be distinguished.

9. (F.) ALL THOSE messuages or tenements, lands, and hereditaments situate in the parish of ——, in the county of ——, particularly mentioned and described in the schedule hereunder written, and delineated in the map or plan hereunder annexed, and referred to by the said schedule: SAVE and except out of the conveyance intended to be hereby made, such and so many and such part or parts of the hereditaments comprised in the said schedule as being of copyhold tenure is and are hereinafter covenanted to be surrendered.

9. Freeholds and copyholds where they cannot be distinguished. (*Another Form.*)

(C.) ALL THAT customary messuage, &c. (*parcels according to the ancient description in the court rolls*), To which premises the said A. B. was admitted tenant at a court holden in and for the said manor on the —— day of ——, And which premises hereby covenanted to be surrendered, are now better known as constituting the copyhold portions of the hereditaments described in the schedule hereunder written.

10. ALL THOSE hereditaments formerly described as follows, that is to say, (*insert ancient description*), and which hereditaments are now better known by the following description, namely (*insert modern description*).

10. Where there are ancient and modern descriptions.

PARCELS WITH GENERAL WORDS.

11. THE hereditaments described in the schedule hereto.

11. A very short form by reference to schedule.

12. ALL THAT allotment piece or parcel of land, numbered —— on the map annexed to the award of the valuer, dated the —— day of ——, 18—, and made in the matter of the enclosure of the —— Down in the parish of S——, and containing by admeasurement ——, which was allotted and awarded in respect of the hereditaments lastly hereinbefore described under and by virtue of the Inclosure Acts.

12. Allotment.

13. Tithe rent-charge.

13. ALL THAT the tithe commutation rent-charge, or yearly sum of £——, in lieu of the great or rectorial tithes, arising on and issuing out of lands comprising in statute measure —— acres in the parish of L——, in the county of ——, payable by virtue of an award, dated the —— day of ——, and duly confirmed by the Tithe Commissioners for England and Wales, on the —— day of ——, subject nevertheless to variation in accordance with the provisions of the Acts of Parliament under the powers of which the tithes of the said parish were commuted.

No. II.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* FEE.

CONVEYANCE OF FREEHOLDS TO PURCHASER IN FEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part, WITNESSETH that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges,) the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*); TO HOLD the same unto and to the use of the said C. D. in fee simple (*e*): [AND THE

Parties.

Consideration.

Conveyance of parcels, to purchaser in fee simple.

Declaration against dower seldom now introduced.

(*e*) As a purchaser has, under the present law, the power of depriving his wife of her dower out of the purchased property by a subsequent disposition by deed or will, there is no sufficient reason for negativing her right to dower by a declaration in a deed of conveyance, and such declaration ought therefore to be omitted in the absence of special instruc-

said A. B. hereby acknowledges the right of the said C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.] In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

CONVEYANCE OF FREEHOLDS TO PURCHASER IN FEE.

Acknowledgment by vendor of right of purchaser to production of documents and undertaking for their safe custody.

The Schedule above referred to.

[*To contain list of documents.*]

Signed, sealed, and delivered by the within-named A. B. in the presence of
[*Name, address, description.*]

No. III.

APPOINTMENT *and* Conveyance *of* Freeholds *to a* Purchaser *to* Uses *to bar* Dower (*f*).

APPOINTMENT AND CONVEYANCE TO USES TO BAR DOWER.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the first part; C. D., of, &c. (*pur-*

Parties.

tions or special circumstances. If such a declaration is embodied in the deed it is a bar, although the purchaser does not execute the conveyance. If it should in any case be desired to have the declaration in the conveyance, the following clause can be introduced:—"And it is hereby declared by the said C. D. that if he shall die leaving a widow, such widow shall not be entitled to dower out of the said premises."

(*f*) A widow, whose marriage took place before the 1st of January, 1834, is entitled to dower out of all corporeal hereditaments, and also out of all incorporeal hereditaments which savour of the realty, as, for instance, advowsons appendant or in gross, tithes, rents, franchises, commons appendant, &c., of which her husband was solely seised for any legal estate of inheritance in possession at any time during the coverture, and which the issue, if any, of the wife might by possibility inherit, but not out of equitable estates, nor out of an estate of which her husband was joint-tenant if he died before his co-tenant. (Co. Litt. 31 b.) A widow is not dowable out of property which may go to the heir, if it is personal in its nature (1 Bro. C. C. 377); or out of real estate of the husband which in equity would go to his executors as personal estate. (Phillips *v.* Phillips, 1 My. & K. 649.) But she is dowable in respect of a base fee during its subsistence (Doe d. Neville *v.* Rivers, 7 T. R. 276); and in respect of an

Where widow entitled to dower under old law.

APPOINTMENT AND CONVEYANCE TO USES TO BAR DOWER.

chaser), of the second part; and E. F., of, &c. (*dower-trustee*), of the third part: WHEREAS by an indenture dated the ——

estate tail, although the husband may die without issue (Paine's Case, 8 Co. Rep. a); and in respect of an estate limited to the husband in fee simple, subject to a limitation over in case he has no issue, although there may be default of issue. (Moody *v.* King, 2 Bing. 447.) The widow's right to dower will not be defeated by the escheat of the estate for want of heirs. (Jenk. 6.) If lands were limited to such uses as her husband should appoint, and subject thereto to the use of himself in fee, the wife's right to dower might be displaced by an exercise of the power. (Maundrell *v.* Maundrell, 10 Ves. 265; Ray *v.* Pung, 5 Mad. 310.)

Dower Act.

The Dower Act, 3 & 4 Wm. 4, c. 105, relates to the dower of any widow married after the 1st of January, 1834; and it is provided by the 2nd section of that Act, that when a husband shall die beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint tenancy), then his widow shall be entitled in equity to dower out of the same land.

The Dower Act also provides, that the widow may be deprived by her husband of her right to dower, not only by a declaration in a deed that she shall not be entitled to dower, but by an absolute disposition of the property in his lifetime, or by his will, or by a declaration in a conveyance to the husband, or by any deed executed by him, or by a declaration in his will, that she shall not be entitled to dower. (Sects. 4, 6, 7.) The 5th section provides that all partial estates and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject, shall be valid as against the wife's right to dower. If the husband devises any land to his widow, out of which she would be dowable if the same had not been so devised, her right to dower is thereby destroyed in respect of any land of her husband, unless the will provided to the contrary. (Sect. 9.) But the Act does not prevent a court of equity from enforcing any covenant or agreement entered into by the husband not to bar the right of his widow to dower out of his lands, or any of them. (Sect. 11.)

When property should be limited to uses to bar dower.

It follows from what has been said that where (as can seldom happen now) a purchaser has a wife living, whom he married before the 1st of January, 1834, it is necessary to limit the property to him in such a manner that he may not have a legal estate of inheritance. This is effected by means of the ordinary uses to bar dower. Under such uses, and subject to the power of appointment, the purchaser takes *at law* only an estate for his life, with an ultimate remainder in fee, which is prevented from merging the life estate by the intervention of the estate given to the dower trustee. Where the property is limited to the vendor to the ordinary uses to bar dower, the practice is for him to appoint as well as convey, and in that case the concurrence of the dower trustee cannot be required, as the legal fee will pass by the exercise of the over-riding power. If the power of appointment is omitted, a technically complete conveyance cannot be made without the concurrence of the dower trustee; but in a case where the power was omitted, and the dower trustee was in Australia, the Court treated an objection founded on his non-concurrence as frivolous and vexatious. (Collard *v.* Roe, 4 De G. & J. 525.)

What Act extends to.

The Dower Act extends to lands of gavelkind tenure (Farley *v.* Bonham, 2 J. & H. 177), but not to copyholds (Powdrell *v.* Jones, 2 S. & G. 407), or to freebench. (Smith *v.* Adams, 5 De G. M. & G. 7.)

day of ——, and made between G. H. of the first part, the said A. B. of the second part, and M. N. of the third part, the hereditaments hereinafter described were conveyed to such uses as the said A. B., by any deed or deeds should appoint, and in default of such appointment, and so far as any such appointment should not extend, to the use of the said A. B. during his life without impeachment of waste, with a limitation to the use of the said M. N., his executors and administrators, during the life of the said A. B., in trust for the said A. B., with remainder to the use of the said A. B., in fee simple: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments at the price of £——: AND WHEREAS the said C. D. is desirous that the same shall be limited to the uses hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c., supra*, p. 216), the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture, and of all other powers (if any) him hereunto enabling, hereby appoints that the hereditaments hereinafter described, shall henceforth go, remain, and be to the uses hereinafter declared concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration hereinbefore expressed, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto the said C. D. in fee simple, to the uses hereinafter declared concerning the same: AND IT IS HEREBY DECLARED, that the appointment and conveyance hereinbefore respectively contained, shall operate and enure, TO SUCH USES as the said C. D. by any deed or deeds shall from time to time appoint, AND in default of and until such appointment, and so far as any such appointment shall not extend, TO THE USE of the said C. D. during his life without impeachment of waste, AND AFTER the determination of that estate by any means in his lifetime, TO THE USE of the said E. F., during the life of the said C. D., IN TRUST for the said C. D. AND AFTER the determination of the estate so limited to the said E. F. as aforesaid, TO THE USE of the said C. D. in fee simple (*acknowledgment and undertaking as to deeds if required, supra*, p. 217).

IN WITNESS, &c.

APPOINTMENT AND CONVEYANCE TO USES TO BAR DOWER.

Recite conveyance to vendor to uses to bar dower.

Agreement for sale.

First witnessing part.

Vendor appoints.

To uses after declared.

Second witnessing part.

Vendor conveys to purchaser.

Parcels.

To uses after declared.

Declaration that appointment and conveyance shall enure to uses to bar dower in favour of purchaser.

No. IV.

APPOINTMENT AND CONVEYANCE IN FEE.

APPOINTMENT *and* CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* FEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite conveyance to uses to bar dower, and agreement for sale as in last precedent*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c. supra*, p. 216), the said A. B., as beneficial owner,

Vendor conveys to purchaser in fee.

hereby appoints and conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

No. V.

CONVEYANCE OF FREEHOLDS SUBJECT TO LEASE FOR 99 YEARS.

CONVEYANCE *of* FREEHOLDS *subject to a* LEASE *for* NINETY-NINE YEARS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. is seised in

Recite seisin of vendor, subject to lease.

fee simple of the hereditaments hereinafter described subject to an indenture dated, &c., and made between (*parties*), whereby the said hereditaments were demised unto the said E. F., his executors, administrators, and assigns, for the term of ninety-nine years, from the —— day of —— then last past, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be

Agreement for sale of hereditaments, subject to lease.

observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments subject to the said lease at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL those pieces or parcels of land

Conveyance of hereditaments.

situate, &c., and bounded, &c., and the ground plot whereof is delineated in the plan drawn in the margin of the first skin of these presents: And all the messuages or dwelling-houses and other erections which have been erected and are now standing on the said pieces or parcels of land or part thereof: To hold the same unto and to the use of the said C. D. in fee simple, subject to the said indenture of lease and with the benefit of the rent thereby reserved, and of the covenants and conditions therein contained and on the lessee's part to be observed and performed (*acknowledgment and undertaking as to deeds, if necessary, supra*, p. 217).

CONVEYANCE OF FREEHOLDS SUBJECT TO LEASE FOR 99 YEARS.

To purchaser in fee, subject to and with benefit of lease.

In witness, &c.

No. VI.

CONVEYANCE *of* Freehold Houses *subject to numerous* Leases *at* Ground Rents.

OF FREEHOLD GROUND RENTS.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: Whereas the said A. B. is seised in fee simple of the hereditaments described in the first column of the schedule hereto, subject to the several indentures of lease mentioned in the second column of the said schedule, by which indentures the said hereditaments were demised to the several persons named in the third column of the said schedule for the several terms of years and at the yearly rents mentioned in the fourth and fifth columns of the said schedule, and subject to the covenants and conditions in the said indentures respectively contained and on the lessees' part to be observed and performed: And whereas the said A. B. has agreed to sell to the said C. D. the said hereditaments subject to the said leases at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. All those pieces or parcels of ground, messuages, and hereditaments described in the first column of the schedule hereto, and all other (if any)

Parties.

Recital of vendor's seisin.

Agreement for sale.

Witnessing part.

Consideration.

Conveyance by vendor to purchaser.

Parcels.

OF FREEHOLD GROUND RENTS.

Habendum to purchaser in fee, subject to and with benefit of leases.

the hereditaments comprised in the several indentures of lease mentioned in the second column of the said schedule: To HOLD the same unto and to the use of the said C. D. in fee simple, subject to the said indentures of lease and with the benefit of the rents thereby respectively reserved, and the covenants and conditions therein respectively contained, and on the lessee's part to be observed and performed (*acknowledgment, &c., as to documents, if necessary, supra*, p. 217).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Description of Property.	Lease.	Lessee.	Term.	Rent.
1. All that piece or parcel of ground, &c. (*describing it as in lease*), and the messuage or dwelling-house erected thereon, now known as, &c.	Indenture dated, &c., and made between (*state date and parties*).	G. H.	99 years, computed from, &c.	£——
2. All that, &c.	Indenture, &c. (*as above*).	J. K.	99 years, computed from, &c.	£——

No. VII.

CONVEYANCE OF REVERSION EXPECTANT ON LEASE TO LESSEE.

CONVEYANCE *of a* REVERSION EXPECTANT *on a* LEASE *to the* LESSEE *who* PURCHASES *under an* OPTION *of* PURCHASE *given to him* BY *the* LEASE.

Parties.

THIS INDENTURE made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite lease from A. B. to C. D. with power to lessee to purchase for the sum of* £——); AND WHEREAS

Recite lease.

That lessee has signified his desire to purchase.

the said C. D. has signified to the said A. B. his desire to purchase the reversion and inheritance in fee simple of the hereditaments comprised in the said indenture of lease expectant on the

term thereby granted at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the provision in this behalf contained in the hereinbefore recited indenture of lease as aforesaid, and in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys and releases unto the said C. D., ALL, &c. (*parcels*) : TO HOLD the same unto and to the use of the said C. D. in fee simple, To the END and intent that the said term of —— years, granted by the said indenture of lease, may be merged and extinguished in the reversion and inheritance of the said premises (*acknowledgment, &c., as to documents, if necessary, supra*, p. 217).

CONVEYANCE OF REVERSION EXPECTANT ON LEASE TO LESSEE.

Witnessing part.

Lessor conveys reversion to lessee in fee.

IN WITNESS, &c.

No. VIII.

DEED *of* COVENANT *to surrender* COPYHOLD LAND.

COPYHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part : WITNESSETH, that in consideration, &c. (*the receipt, &c., supra*, p. 216), the said A. B., as beneficial owner (*g*), hereby covenants with the said C. D., that he the said A. B. will forthwith, at the cost of the said C. D., surrender or cause to be surrendered into the hands of the lord of the manor of ——, in the county of ——, according to the custom of the said manor, ALL, &c. (*parcels*), TO THE USE of the said C. D., in customary fee simple, at the will of the lord of the said manor, according to the custom of the said manor, at and under the rents, suits, and services therefor due and of right accustomed (*acknowledgment as to documents, if necessary, supra*, p. 217).

Parties.

Witnessing part.

Consideration.

Vendor covenants to surrender

copyholds to purchaser in fee.

IN WITNESS, &c.

(*g*) The interpretation clause in the Conveyancing Act, 1881, provides that the term "conveyance" shall include "covenant to surrender." It follows that if the vendor as beneficial owner covenants to surrender, covenants for title will be implied.

No. IX.

SURRENDER OF COPYHOLDS.

SURRENDER *out of* COURT *of* COPYHOLDS *to a* PURCHASER.

The MANOR *of* ——, *in the county of* ——} BE IT REMEMBERED, that on this —— day of ——, A. B., of, &c. (*vendor*), comes before L. M., of, &c., steward of the manor out of Court, and in consideration of the sum of £—— to him paid by C. D., of, &c. (*purchaser*), surrenders into the hands of the lord of the manor, by the hands and acceptance of his said steward, according to the custom of the manor, ALL, &c. (*parcels*): To THE USE of the said C. D. (*h*), his heirs and assigns, at the will of the lord, according to the custom of the manor, at and under the rents, suits, and services therefor due and of right accustomed (*i*).

Consideration.

Surrender of copyholds.

to purchaser in fee.

This surrender was taken and accepted the day and year above written by me.

Signed L. M. (*steward*),
Steward of the Manor.

No. X.

ASSIGNMENT OF LEASEHOLDS.

ASSIGNMENT *of a* LEASEHOLD MESSUAGE *to a* PURCHASER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease, dated the —— day of ——, and made between G. H., of the one part, and the said A. B., of the other part, ALL that mes-

Recite lease.

(*h*) The 51st section of the Conveyancing Act, 1881, rendering unnecessary the use of the word "heirs" in the limitation of an estate in fee simple, only applies to such a limitation in a *deed*.

(*i*) The lord of the manor cannot be compelled to accept a surrender to such uses as the purchaser shall appoint, and in default of and until appointment to the use of the purchaser in fee. (Flack *v.* Master, &c. of Downing College, 13 C. B. 945.)

suage or tenement, &c. (*parcels as described in the lease*) (*k*), were demised unto the said A. B., his executors, administrators, and assigns, from the —— day of ——, then last past, for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the messuage and premises comprised in the hereinbefore recited indenture of lease for the residue of the said term, subject to the said rent, covenants, and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE messuage and premises comprised in and demised by the hereinbefore recited indenture of lease; TO HOLD the same unto the said C. D. (*l*) for all the residue now unexpired of the said term of —— years, subject to the rent reserved by the said indenture, and the covenants and conditions therein contained, and which henceforth on the part of the lessee ought to be observed and performed; AND THE said C. D. (*m*), hereby covenants with the said A. B. that the said C. D., his executors, administrators, and assigns, will during the residue of the said term pay the

ASSIGNMENT OF LEASEHOLDS.

Agreement for sale.

Assignment of parcels in lease for residue of term.

Subject to rent and observance of lessee's covenants.

Covenant by purchaser to pay rent and observe covenants in lease.

(*k*) The recital of the indenture of lease should set forth the parcels as they are therein described. If the property at the date of the assignment is known by a different description, or any buildings have been erected on the premises since the lease, so as to require notice in the operative part, this should be done by way of addition to the old description.

(*l*) It was formerly usual, in an assignment of leaseholds and other personal property, to add the words "his executors, administrators, and assigns," after the name of the assignee, not because such words were essential, but by analogy to a limitation of freeholds to "heirs." As the word "heirs" is now unnecessary under the recent Act, and is accordingly discontinued in this work, the words "his executors, administrators, and assigns" are omitted also.

In assignment of leaseholds, words "his executors, administrators, and assigns" now omitted.

(*m*) The words "for himself, his heirs, executors, and administrators," are now unnecessary. They were formerly inserted because specialty debts, where the heir was expressed to be bound, had a priority over other debts in the administration of assets, but this is no longer the case; and now, by the 59th section of the Conveyancing Act, 1881, it is provided, as to covenants made or implied after the commencement of the Act, that a covenant, though not expressed to bind the heirs, shall operate to bind the heirs and real estate as well as the executors and administrators of the person making the same as if heirs were expressed.

In covenants the words "for himself, his heirs," &c., no longer necessary.

ASSIGNMENT OF LEASEHOLDS.

rent reserved by the said indenture, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and his estate and effects from and against all claims and demands on account of the same (*n*).

In witness, &c.

No. XI.

ASSIGNMENT OF PROPERTY COMPRISED IN SEVERAL LEASES.

ASSIGNMENT *of Property comprised in* SEVERAL LEASES *to a* PURCHASER *for the residue of the* SEVERAL TERMS.

Parties.

Agreement for sale of hereditaments comprised in before-mentioned leases.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*recite several leases to A. B.*): And whereas the said A. B. hath agreed to sell to the said C. D. the hereditaments and premises comprised in the hereinbefore recited indentures of lease for all the unexpired residue of the said several terms of years respectively subject to the rents and lessee's covenants thereby and therein respectively reserved and contained, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., All the hereditaments

Witnessing part.

Consideration.

Vendor assigns hereditaments comprised in recited leases

When purchaser bound to covenant with assignor.

(*n*) An assignee of a leasehold interest is not liable for the rent and covenants contained in the lease after he has executed an assignment of the lease to another person; so that if the vendor of a leasehold interest is not the original lessee, but an assignee, or the representative of an assignee, he is not entitled to a covenant from the purchaser for the payment of the rent and the observance of the covenants, unless he, the vendor, is under the obligation of a covenant entered into by him with a former vendor or otherwise for the payment and observance of such rent and covenants.

Original lessee has right to be indemnified.

In the absence of any express covenant, the original lessee has a legal right to be indemnified by the holder of the lease for the time being against breaches of covenant committed during his tenancy, whether such holder takes by assignment directly from the lessee, or after mesne assignments. (Moule *v.* Garrett, L. R. 7 Exch. 101.)

Whether counterpart of assignment necessary.

The vendor sometimes stipulates that a counterpart of the assignment shall be executed by the purchaser. But this seems unnecessary.

and premises comprised in and demised by the hereinbefore recited indentures of lease respectively; To HOLD the same unto the said C. D., for all the residue now unexpired of the said several terms of years granted therein by the said indentures respectively, subject to the rents reserved thereby and the covenants and conditions therein respectively contained, and which henceforth on the part of the lessee ought to be observed and performed: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will during the residue of the said terms, pay the rents reserved by the said indentures respectively, and observe and perform the covenants and conditions therein respectively contained and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and his estate and effects from and against all claims and demands on account thereof respectively.

ASSIGNMENT OF PROPERTY COMPRISED IN SEVERAL LEASES.

to purchaser for residue of several terms.

Covenant by purchaser

to pay rent and perform covenants, and

to indemnify vendor therefrom.

IN WITNESS, &c.

No. XII.

ASSIGNMENT *of* LEASEHOLDS *by* EXECUTORS.

ASSIGNMENT OF LEASEHOLDS BY EXECUTORS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*executors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part. (*Recite lease to J. K., &c.*): AND WHEREAS (after divers mesne assignments) by an indenture dated, &c., and made, &c., the premises comprised in the said indenture of lease were assigned unto the said L. M. for the residue of the said term, subject to the said rent, covenants and conditions: AND WHEREAS the said L. M. died on the —— day of ——, having made his will dated the —— day of ——, and thereby appointed the said A. B. and C. D executors thereof, who duly proved the same, on the —— day of ——, in the Principal Probate Registry of the High Court of Justice [*or, as the case may be*, "in the Probate Registry at —— of the High Court of Justice"]: AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. the premises comprised in the hereinbefore recited indenture of lease for the residue of the said term, subject to the said rent,

Parties.

Recite indenture of lease.

Assignment of lease.

Will of assignee of lease appointing vendors executors.

Death of testator and probate of his will.

Agreement for sale.

ASSIGNMENT OF LEASEHOLDS BY EXECUTORS.

covenants, and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid by the said E. F. to the said A. B. and C. D. (*the receipt, &c.*), the said A. B. and C. D. as the personal representatives of the said L. M., deceased, hereby assign unto the said E. F., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease: TO HOLD the same unto the said E. F. for all the residue now unexpired of the said term of —— years, subject to the rent reserved thereby, and the covenants and conditions therein contained, and which henceforth on the part of the lessee ought to be observed and performed: AND THE SAID E. F. hereby covenants with the said A. B. and C. D. that the said E. F., his executors, administrators, and assigns, will during the said term pay the rent reserved by the said indenture, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and C. D., and each of them, and the estate and effects of the said L. M., deceased, from and against all claims and demands on account thereof.

Witnessing part.

Vendors as executors assign premises comprised in lease,

to purchaser for remainder of term.

Covenant by purchaser to pay rent and observe covenants in lease.

IN WITNESS, &c.

No. XIII.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED.

ASSIGNMENT *of a Portion of* LEASEHOLD PREMISES *which are held under one* LEASE *at an entire* RENT, *the* RENT *being apportioned between the* VENDOR *and* PURCHASER (*o*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-*

Power of distress as security for observance of mutual covenants void.

(*o*) On an assignment of part of the property comprised in a lease it has been usual to make the purchaser and vendor not only covenant with each other for the payment of their respective parts of the rent and for the observance of the covenants in the lease as regards their respective parts of the property, but also to give to each other powers of distress by way of further security. But it is conceived that a power of distress for such a purpose, if contained in an unregistered deed, is now rendered void by the Bills of Sale Acts, 1878 and 1882. (See Pulbrook *v.* Ashby, 56 L. J. Q. B. D. 376; Stevens *v.* Marston, W. N. 1890, p. 193.)

This deed should be executed in duplicate.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED.

chaser), of the other part (*Recite lease to E. F. for seventy-eight years at yearly rent of* £12, *setting out the parcels as in the lease,—also assignment of lease by E. F. to A. B. for residue of term*): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the messuage and premises intended to be hereby assigned (being part of the premises comprised in the hereinbefore recited indenture of lease), for the residue of the said term, at the price of £——: AND WHEREAS upon the treaty for the said sale it was agreed that the said yearly rent of £12 should be apportioned in equal shares between the premises intended to be hereby assigned and the residue of the premises comprised in the said indenture of lease, and that the parties hereto should enter into the covenants hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL, &c. (*here set out the particular parcels which are agreed to be sold*); TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of seventy-eight years, subject to the payment of the yearly rent of £6, being one moiety of the said yearly rent of £12 reserved by the said indenture of lease, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed, so far only as the same relate to the premises hereby assigned: AND THE SAID C. D. hereby covenants with the said A. B. that the said C. D., his executors, administrators, and assigns, will at all times hereafter during the said term pay the said yearly rent of £6, part of the said yearly rent of £12 reserved by the said indenture of lease, and observe and perform all the covenants and conditions therein contained, and which henceforth on the part of the lessee ought to be observed and performed, so far as the same relate to the said premises hereby assigned, and will at all times hereafter keep indemnified the said A. B., his executors, administrators, and assigns, and his and their estate and effects, from and against all claims and demands for or on account of the nonpayment of the said rent, or the breach of the said covenants and conditions, so far as the same relate as aforesaid: AND THE SAID A. B. hereby covenants with the said C. D. that the said A. B., his executors, administrators, or assigns, will at all times during the said term pay the yearly rent of £6, the residue of the said yearly rent of £12

Recite lease and assignment.

Agreement for sale of part of premises comprised in lease.

Agreement between vendor and purchaser as to the apportionment of the rent.

Witnessing part.

Consideration.

Assignment by vendor of part of premises comprised in lease to purchaser for residue of term at apportioned rent.

Covenant by purchaser for payment and observance of his proportion of rent and covenants.

Covenants by vendor for payment and observance of his proportion of rent and covenants.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED.

reserved by the said indenture of lease, and observe and perform all the covenants and conditions therein contained, and which henceforth on the part of the lessee ought to be observed and performed, so far as the same relate to such of the premises comprised in the said indenture of lease as are not hereby assigned, and will at all times hereafter keep indemnified the said C. D., his executors, administrators, and assigns, and his and their estate and effects, from and against all claims and demands for or on account of the nonpayment of the said rent or the breach of the said covenants and conditions so far as the same relate as last aforesaid: And the said A. B., who retains the said indenture of lease, hereby acknowledges the right of the said C. D. to production and delivery of copies thereof and undertakes for the safe custody thereof.

In witness, &c.

No. XIV.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE REMAINING PART IS SOLD TO ANOTHER PURCHASER.

ASSIGNMENT *to a* Purchaser *of part of* Leasehold *premises held under* one Lease, *where the* remaining *part is sold at the same time to* Another Purchaser *and the* Rent *is* Apportioned *between the two* (*p*).

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite lease*): And whereas the said A. B. has agreed to sell to the said C. D. the messuage and premises intended to be hereby assigned (being part of the premises comprised in the said indenture of lease) for the residue of the said term, subject to the apportioned rent of £6, at the price of £——. And whereas the said A. B. has sold the remainder of the premises comprised in the said indenture of lease to the said E. F., subject to the payment of the yearly

Parties.

Recite agreement for sale.

Recite sale and assignment by vendor of remaining part of premises

(*p*) See note to the last precedent. In the above precedent, it is considered that the purchaser is sufficiently protected against the remainder of the rent, and against the covenants so far as regards the remainder of the property, by the recital of the sale and assignment to the other purchaser, and the covenant entered into by the latter in the recited deed.

rent of £6, being the remainder of the said yearly rent of £12, and the same have been or are intended to be assigned to the said E. F. by an indenture bearing even date with these presents, and made between the said A. B., of the one part, and the said E. F., of the other part, which indenture contains a covenant by the said E. F., to pay the said rent of £6, apportioned to be paid in respect of the premises thereby assigned, and to observe and perform the covenants and conditions contained in the indenture of lease, and on the lessee's part to be observed and performed so far as the same relate to the said premises: NOW THIS INDENTURE ALSO WITNESSETH that (*assignment to C. D., and covenants by him to pay apportioned rent and observe covenants, &c., as in Precedent No. XIII*).

ASSIGNMENT OF PART OF LEASEHOLDS WHERE REMAINING PART IS SOLD TO ANOTHER PURCHASER.

comprised in lease to E. F.

In witness, &c.

No. XV.

CONVEYANCE *of a* Leasehold Estate *for* Lives (*p*).

CONVEYANCE OF A LEASEHOLD ESTATE FOR LIVES.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: Whereas by an indenture dated the —— day of ——, and made between G. H., of the one part, and the said C. D., of the other part, All, &c. (*here set out the parcels as described in the lease*), were granted by the said G. H. unto the said A. B., his executors, administrators, and assigns,

Parties.

Recite lease for lives.

(*p*) An estate *pour autre vie* may be limited by the original grant, or by any subsequent assurance thereof, *either* to the grantee and his heirs, in which case on his death intestate the heir will take as special occupant, and the property will be chargeable in his hands as assets by descent, as in the case of freehold land in fee simple; *or* to the grantee, his executors and administrators, in which case the executor or administrator will take by special occupancy, or to the grantee without any words of limitation, in which case it goes to the executor or administrator by virtue of the Wills Act (1 Vict. c. 26), s. 6, and an estate *pour autre vie* coming to an executor or administrator by reason of a special occupancy or otherwise, is made assets in his hands, to be applied in the same manner as the personal estate of the testator or intestate. If an estate *pour autre vie*, either by the original grant or by any subsequent assurance thereof, is limited to the grantee, his *heirs, executors, and administrators*, the *heir*, and not the executor, will take as special occupant. (Atkinson *v.* Baker, 4 T. R. 229.)

Estates pour autre vie.

CONVEYANCE OF A LEASEHOLD ESTATE FOR LIVES.

for the lives of —— and ——, and the life of the survivor of them, at the yearly rent of £5, and subject to the covenants and conditions therein contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments and premises comprised in the said indenture, for the lives and subject as aforesaid, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the hereditaments and premises comprised in and granted by the hereinbefore recited indenture of lease: TO HOLD the same unto and to the use of the said C. D. for the lives of the said —— and ——, and the life of the survivor of them, subject to the rent, covenants and conditions reserved by and contained in the said indenture, and on the part of the grantee to be paid, observed, and performed: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will pay the rent reserved by the said indenture of lease and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B., and his estate and effects, from and against all claims and demands on account of the same.

Agreement for sale of lease.

Conveyance of parcels to purchaser for lives of cestuis que vie.

Covenant by purchaser to pay rent and perform covenants, and indemnify vendor therefrom.

IN WITNESS, &c.

No. XVI.

ASSIGNMENT OF LEASEHOLDS AND OF COVENANT FOR RENEWAL.

ASSIGNMENT *of* LEASEHOLDS *for the residue of a* TERM DETERMINABLE *on* LIVES, *and of the benefit of a* COVENANT *for* PERPETUAL RENEWAL.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS, by an indenture, dated, &c., and made between X. Y., of the one part, and the said A. B., of

the other part, ALL (*parcels*) were demised by the said X. Y. unto the said A. B., his executors, administrators, and assigns, for the term of 99 years, from the —— day of ——, if F. and the said G. and H., or any of them, should so long live, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease now in recital contained, and on the lessee's part to be observed and performed: AND by the indenture now in recital, the said X. Y. covenanted with the said A. B., that in case on the decease of such one of them the said F., G., and H., as should first die, the said A. B., his executors, administrators, or assigns, should within six calendar months from the dropping of such life give to the said X. Y., his heirs or assigns, or leave at his or their usual or last-known place of abode, a notice in writing, requesting a new lease of the premises for 99 years if such two of them the said F., G., and H., as should be then living, and one other person to be nominated in that behalf by the person or persons giving or leaving such notice, or any of them should so long live, and should within the said period pay the sum of £—— to the said X. Y., his heirs or assigns, by way of fine, for the renewal of such lease, then and in such case the said X. Y., his heirs or assigns, would within such period as aforesaid, at the request and cost of the said A. B., his executors, administrators, or assigns, grant unto him or them on the surrender of the lease now in recital, a new lease of the said premises for and determinable on the lives aforesaid according to such notice upon the same terms and under and subject to the same covenants, provisoes, and declarations as were contained in the lease now in recital, including the covenant for renewal: AND WHEREAS the said A. B. hath agreed with the said C. D. for the sale to him of the premises comprised in the said indenture of lease together with the benefit of the covenant for perpetual renewal in the same indenture contained subject to the said rent and covenants, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D., &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the messuages and premises comprised in and demised by the hereinbefore recited indenture: TOGETHER with the benefit of the covenant therein contained for the perpetual renewal of the said lease as

ASSIGNMENT OF LEASEHOLDS AND OF COVENANT FOR RENEWAL.

Recite lease to vendor for a term determinable on lives, with covenant for perpetual renewal.

Agreement for sale.

Consideration.

Vendor assigns to purchaser.

Leasehold premises and benefit of covenant for renewal.

ASSIGNMENT OF LEASEHOLDS AND OF COVENANT FOR RENEWAL.

hereinbefore mentioned: To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 99 years, determinable as aforesaid, and for all other the estate and interest therein of the said A. B., subject to the said yearly rent of £——, and the covenants and conditions in the same indenture contained, and on the lessee's part to be observed and performed:

Covenant by purchaser to pay rent and perform covenants, and keep vendor indemnified therefrom.

AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will during the said term determinable as aforesaid pay the yearly rent reserved by the said indenture, and observe and perform the covenants and conditions therein contained and on the lessee's part to be observed and performed, and will keep indemnified the said A. B., and his estate and effects, from all claims and demands on account thereof.

IN WITNESS, &c.

No. XVII.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS.

CONVEYANCE *of* FREEHOLDS *and* COVENANT *for the* SURRENDER *of* COPYHOLDS (*q*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), (*Conveyance of freeholds to C. D., in fee simple, supra*, p. 216): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid (*Covenant for the surrender of the copyhold hereditaments to the use of C. D., in customary fee simple, supra*, p. 223): AND IT IS HEREBY DECLARED, that for the purpose of the Stamp Act (*q*) the sum of £——, part of the said purchase-money, shall be considered

Parties.

Declaration as to apportionment of purchase-money for

Stamp on this deed.

(*q*) This deed will carry an *ad valorem* stamp on the sum which is declared to be the price of the freeholds, and the surrender of the copyholds will carry an *ad valorem* stamp on the sum which is declared to be the price of the copyhold portion.

When the property to be sold is freehold and an equitable estate in copyhold, both properties will pass by the deed, so that the deed will be stamped with an *ad valorem* duty on the entire purchase-money.

the price of the said freehold hereditaments, and the sum of £——, being the remainder of the said purchase-money, the price of the said copyhold hereditaments.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS.

purpose of Stamp Act.

IN WITNESS, &c.

No. XVIII.

CONVEYANCE *of* FREEHOLDS *and* ASSIGNMENT *of* LEASEHOLDS.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. is seised in fee simple of the freehold hereditaments hereinafter described and intended to be hereby conveyed: AND WHEREAS (*Recite lease to A. B., supra*, p. 224): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said freehold and leasehold hereditaments and premises, subject as to the said leasehold premises to the said rent, covenants and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Conveyance of freeholds to C. D. in fee simple, supra*, p. 216): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., &c. (*Assignment of leaseholds to C. D., and covenant by him to pay rent and perform covenants and indemnify vendor therefrom, supra*, p. 225).

Parties.

Recite seisin of freeholds and lease.

Agreement for sale.

Conveyance of freeholds and assignment of leaseholds.

IN WITNESS, &c.

No. XIX.

CONVEYANCE OF FREEHOLDS, COVENANT TO SURRENDER COPYHOLDS, AND ASSIGNMENT OF LEASEHOLDS.

CONVEYANCE *of* FREEHOLDS, COVENANT *to* SURRENDER COPYHOLDS, *and* ASSIGNMENT *of* LEASEHOLDS.

Parties.

Recite seisin of freeholds and copyholds.

Recite lease.

Agreement for sale.

Vendor conveys freeholds,

and covenants to surrender copyholds,

and assigns leaseholds to purchaser.

Apportionment of purchase-money for purpose of Stamp Act.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*purchaser*), of the second part, and E. F., of, &c. (*dower trustee*), of the third part: WHEREAS the said A. B. is seised in fee simple of the freehold hereditaments hereinafter described, and is seised or entitled in customary fee simple of or to the copyhold hereditaments hereinafter described according to the custom of the manor of ——, of which the same are holden, subject to the customary rents, suits, and services: AND WHEREAS (*Recite lease, supra*, p. 224): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said freehold, copyhold, and leasehold hereditaments and premises, subject as to the said copyhold hereditaments to the customary rents, suits, and services, and as to the said leasehold premises to the said rent, covenants, and conditions, at the price of £3000: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £3000, paid by the said C. D. to the said A. B., &c. (*the receipt, &c.*), THE said A. B., &c. (*Conveyance to C. D. in fee simple, supra*, p. 216): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid (*Covenant by A. B. for the surrender of the copyholds to the use of C. D., in customary fee simple; supra*, p. 223): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid (*Assignment of leaseholds to C. D., and covenant by him to pay rent and observe covenants, and indemnify vendor therefrom, supra*, p. 225): AND IT IS HEREBY DECLARED, that for the purpose of the Stamp Act the sum of £2000, part of the said purchase-money, shall be considered the price of the said freehold and leasehold premises, and the sum of £1000, the remainder of the said purchase-money, the price of the said copyhold premises (*Acknowledgment, &c. as to documents, if necessary, supra*, p. 217).

IN WITNESS, &c.

No. XX.

CONVEYANCE *by a* HUSBAND *and* WIFE *married before the 1st January*, 1883, of FREEHOLDS *of the* WIFE ACQUIRED *by her* BEFORE *that* DATE (*r*).

CONVEYANCE OF WIFE'S FREEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C., his wife (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., died on the —— day of ——, 1880, having made his will, dated the —— day of ——, whereby he devised the hereditaments hereinafter described unto the said C. B. in fee simple: AND WHEREAS the said A. B. and C., his wife, have agreed to sell to the said E. F. the said hereditaments at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C., his wife, paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE said A. B. and C., his wife, as beneficial owners (*s*), do and each of them doth by this deed duly acknowledged by the said C. B., pursuant to the statute in that behalf, convey unto the said E. F. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple.

Parties.

Recite will devising hereditaments to wife.

Agreement for sale by husband and wife.

Conveyance by husband and wife,

to purchaser.

IN WITNESS, &c.

No. XXI.

CONVEYANCE *by a* MARRIED WOMAN *under a* POWER (*t*).

CONVEYANCE BY MARRIED WOMAN UNDER POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN C. B., the wife of A. B., of, &c. (*appointor*), of the one part,

Parties.

(*r*) This deed must be acknowledged by the wife pursuant to the 3 & 4 Will. 4, c. 74.

(*s*) See sect. 7, sub-sect. 3, of the Conveyancing Act, 1881.

(*t*) This deed need not be acknowledged by the appointor, nor can the concurrence of the husband be required.

CONVEYANCE BY MARRIED WOMAN UNDER POWER.

and E. F., of, &c. (*appointee*), of the other part (*Recite will of X. Y., whereby the lands were devised to such uses as C. B. should, by deed, notwithstanding coverture, appoint—death of testator, and probate of his will—agreement by C. B. with E. F. for sale*):

Recite will and agreement for sale.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said C. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*)

Witnessing part.

Consideration.

Wife appoints

the said C. B., as beneficial owner, in exercise of the power for this purpose given to her by the said will of the said X. Y. as aforesaid, and of all other powers (if any) her hereunto enabling, Doth by this deed appoint, that All, &c. (*parcels*),

parcels

shall henceforth go, remain, and be To the use of the said E. F. in fee simple.

to purchaser in fee.

In witness, &c.

No. XXII.

CONVEYANCE *of* Freeholds, *or* Covenant *to* Surrender Copyholds, *or* Assignment *of* Leaseholds *by a* Woman Married *after* the 31*st December*, 1882 (*u*).

CONVEYANCE, &C., BY A WOMAN MARRIED AFTER THE 31ST OF DECEMBER, 1882.

THIS INDENTURE, made the —— day of ——, Between A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882 (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*x*), Witnesseth, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner (*y*), (*the same as Precedent No. II.*

Parties.

Married woman conveys parcels.

(*u*) See the Married Women's Property Act, 1882, ss. 2 and 5, and *supra*, p. 170. Under this precedent the vendor conveying as beneficial owner will be liable to the statutory covenants for title, in respect of her separate property.

Vendor conveying as beneficial owner, liable to statutory covenants.

(*x*) If the property is leasehold the lease and agreement for sale will be recited as in Precedent No. X., *supra*, p. 224.

(*y*) Under the Married Women's Property Act, 1882, every covenant by a married woman, whether express or implied, is deemed to be entered into by her with respect to and so as to bind her present and after-acquired separate property, and she may be sued thereupon accordingly, as if she

Covenant by married woman.

supra, p. 216, as to freeholds, *or No. VIII.*, *supra*, p. 223, as to copyholds, *or No. X.*, *supra*, p. 224, as to leaseholds, *substituting "she" for "he," and "her" for "him," when necessary*).

IN WITNESS, &c.

CONVEYANCE, &c., BY A WOMAN MARRIED AFTER THE 31ST OF DECEMBER, 1882.

No. XXIII.

CONVEYANCE *by a* MARRIED WOMAN, *who was* MARRIED *before the 1st of January*, 1883, *of* FREEHOLDS ACQUIRED *by her by* DEVISE *and* INHERITANCE *after that* DATE (*z*).

CONVEYANCE BY MARRIED WOMAN MARRIED BEFORE 1883.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., the wife of H. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS G. H., late of ——, deceased, made his will dated the —— day of ——, and thereby devised the hereditaments firstly hereinafter described unto and to the use of his daughter, the said A. B., in fee simple, and appointed L. M., of, &c., and N. O., of, &c., executors of his said will (*Death of testator in* 1883, *and probate of his will*): AND WHEREAS the said testator was at the time of his decease also seised of the hereditaments secondly hereinafter described for an estate of inheritance in fee simple in possession, but died intestate as to such last-mentioned hereditaments, leaving the said A. B., his daughter and only child, his sole heiress-at-law: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. all the hereditaments hereinafter described at the price of £——. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby

Parties.

Recite will under which hereditaments firstly described were devised to the vendor.

Death of testator in 1883, and probate of his will.

That testator was entitled also to hereditaments secondly described and died intestate as to the same.

That vendor was his daughter and only child.

Agreement by the married daughter to sell.

were a *feme sole* (ss. 1, 13). The covenant does not operate as an immediate specific charge on her separate estate, but it places the covenantee in a position to bring an action thereunder on the occasion of any breach, and obtain a judgment under which the separate estate may be taken in execution.

(*z*) See Married Women's Property Act, 1882, s. 5.

CONVEYANCE BY MARRIED WOMAN MARRIED BEFORE 1883.

The vendor conveys parcels to purchaser in fee.

acknowledges) the said A. B. as beneficial owner hereby conveys unto the said E. F. First, All, &c. (*describe the hereditaments devised by the will of G. H.*), And Secondly, All, &c. (*describe the hereditaments to which the said A. B. had become entitled by intestacy as the heiress-at-law of G. H.*). To hold the same unto and to the use of the said E. F. in fee simple.

In witness, &c.

No. XXIV.

SURRENDER OF COPYHOLDS WHERE VENDOR IS A WOMAN MARRIED BEFORE 1ST JANUARY, 1883.

SURRENDER *out of* Court *of* Copyholds, *where the* Vendor *is a* Married Woman, *and the Marriage has taken place before* 1*st* January, 1883.

The manor of ——, in the county of —— } BE IT REMEMBERED, that on this —— day of ——, A. B., of, &c., and C., his wife (*vendors*), come before L. M., &c., steward of the manor, out of court, and in consideration of the sum of £—— to them paid by E. F., of, &c. (*purchaser*), surrender into the hands of the lord of the manor by the hands and acceptance of his said steward, according to the custom of the manor (the said C. B. having been first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting hereto) (*a*), All, &c. (*parcels*), [to which said hereditaments and premises the said C. D. was admitted tenant at a court holden for the manor on the —— day of ——,] To the use of the said E. F., his heirs and assigns, for ever, at the will of the lord, according to the custom of the manor, by and under the rents, suits and services therefor due and of right accustomed.

Surrender of copyholds by husband and wife to purchaser in fee.

This surrender was taken and accepted the day and year above written by me,

(Signed) L. M. (*Steward*),
Steward of the Manor.

(*a*) A surrender of copyholds by a married woman is void unless she is privately examined by the lord or his steward as to her voluntary consent. (Scriv. Cop. p. 107.)

No. XXV.

SURRENDER *of* COPYHOLDS *to a* PURCHASER *by a* WOMAN MARRIED *since the 31st of December*, 1882 (*b*).

SURRENDER BY WOMAN MARRIED SINCE 1882.

Manor of ——. } BE IT REMEMBERED, that on this —— day of ——, 18—, A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882, comes, &c. (*same as Precedent No. IX., supra, p. 224, substituting "her" for "his" and "him."*)

No. XXVI.

CONVEYANCE *of* FREEHOLDS *to a* MARRIED WOMAN *who has* PURCHASED *the same out of* MONEYS *to which she is* ENTITLED *for her* SEPARATE USE.

CONVEYANCE OF FREEHOLDS WHEN MARRIED WOMAN HAS PURCHASED SAME OUT OF SEPARATE ESTATE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., wife of E. D., of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. out of her separate property on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges,) the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple (*c*).

Parties.

In consideration of moneys paid by married woman out of her separate estate.

Vendor conveys freeholds to her in fee simple.

IN WITNESS, &c.

(*b*) As the married woman is entitled for her separate use under the Married Women's Property Act, 1882, she can surrender without the concurrence of her husband and without any separate examination.

(*c*) Since the 31st of December, 1882, the conveyance of freeholds to a married woman can be properly taken in this form, whether she was married before 1883 or since, and whether the separate money with which the purchase has been made has been acquired under the Married Women's Property Act, 1882, or otherwise. The above precedent can be easily adapted to an assignment of leaseholds or a surrender of copyholds to a married woman.

How conveyance to a married woman should be taken.

No. XXVII.

CONVEYANCE BY A WIFE TO HER HUSBAND.

CONVEYANCE *of a* FREEHOLD ESTATE *by a* MARRIED WOMAN *to her* HUSBAND, *the* PROPERTY *having been acquired and the* MARRIAGE *having taken place before* 1883 (*d*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN C. B., the wife of A. B., of, &c., of the one part, and the said A. B. of the other part: WHEREAS L. M., late of, &c., being seised in fee simple of the hereditaments hereinafter described, died on the —— day of ——, 1865 (*e*), intestate, leaving the said C. B., his daughter and only child, his sole heiress-at-law: AND WHEREAS the said C. B. was married to the said A. B. before the 1st day of January, 1883: AND WHEREAS the said C. B. is desirous of conveying the said hereditaments unto the said A. B. for his absolute use and benefit in fee simple: NOW THIS INDENTURE WITNESSETH that for effectuating the said desire, and in consideration of her love and affection for her said husband, the said C. B. (*f*), with the concurrence of the said A. B., by this deed duly acknowledged by her pursuant to the statute in that behalf (*g*), hereby conveys unto the said A. B., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said A. B. in fee simple.

Recite death of owner, leaving vendor, his only child.

Wife with concurrence of her husband conveys

IN WITNESS, &c.

(*d*) By the Conveyancing Act, 1881, s. 50, a wife can now convey freeholds directly to her husband without the intervention of a grantee to uses.

(*e*) This date shows that C. B. could not have become entitled to the property for her separate use under the Married Women's Property Acts.

(*f*) As the conveyance is voluntary, C. B. does not convey as "beneficial owner," so as to be liable to implied covenants for title.

(*g*) If C. B. had married or acquired her property after the 31st of December, 1882, an acknowledgment by her would have been unnecessary.

No. XXVIII.

CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN *entitled for her* SEPARATE USE *and by her* TRUSTEE *by her* DIRECTION.

CONVEYANCE BY A MARRIED WOMAN AND HER TRUSTEE BY HER DIRECTION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*trustee*), of the first part, C. D., the wife of G. D., of, &c. (*vendor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: WHEREAS G. H., late of, &c., deceased, being seised in fee simple of the hereditaments hereinafter described, duly made his will, dated, &c., and thereby devised all his real estate unto and to the use of the said A. B., his heirs and assigns, in trust for his daughter the said C. D., her heirs and assigns, for her separate use: (*death of testator and probate of his will*): AND WHEREAS the said C. D. hath agreed to sell to the said E. F. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said C. D. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as trustee, by the direction of the said C. D. hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said E. F. in fee simple.

Parties.

Devise to trustee for separate use of vendor.

Agreement for sale.

Consideration.

Trustee by direction of vendor conveys, and vendor confirms parcels to purchaser.

IN WITNESS, &c.

No. XXIX.

CONVEYANCE *by a* MORTGAGOR *and* MORTGAGEE *in* FEE, PART *of the* PURCHASE-MONEY *being paid to the* MORTGAGEE *in satisfaction of his debt.*

CONVEYANCE BY MORTGAGOR AND MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D. of, &c. (*vendor*),

Parties.

CONVEYANCE BY MORTGAGOR AND MORTGAGEE.

of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments hereinafter described were conveyed by the said C. D. unto and to the use of the said A. B., in fee simple, subject to a proviso for the redemption of the said hereditaments on payment by the said C. D. to the said A. B. of the sum of £2,000, with interest thereon on a day now past: AND WHEREAS the said C. D. hath agreed to sell the said hereditaments to the said G. H. at the price of £3,000: AND WHEREAS the said sum of £2,000 is still due on the security of the said indenture of mortgage, but all interest for the same has been paid up to the date of these presents: AND WHEREAS upon the treaty for the said purchase, it was agreed that the said sum of £2,000 should be paid to the said A. B. out of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2,000 to the said A. B. paid by the said G. H. on or before the execution of these presents, by the direction of the said C. D. (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the sum of £1,000 to the said C. D. at the same time by the said G. H. (the payment and receipt in manner aforesaid of which said sums of £2,000 and £1,000 making together the sum of £3,000 the said C. D. hereby acknowledges), the said A. B., as mortgagee, by the direction of the said C. D., hereby conveys, and the said C. D. as beneficial owner, hereby conveys and confirms unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple, freed and discharged from all principal money and interest secured by and all claims and demands under the said indenture of mortgage.

Recite mortgage.

Contract for sale.

Sum due upon mortgage,

and agreement for payment of same out of purchase-money.

Witnessing part.

Consideration to mortgagee,

and consideration to vendor.

Conveyance by mortgagee and mortgagor

to purchaser in fee.

IN WITNESS, &c.

No. XXX.

CONVEYANCE *by a* MORTGAGOR *and* MORTGAGEES *for a* TERM *of* YEARS *to a* PURCHASER *in* FEE—*the* MORTGAGEES *being* SATISFIED *that their* REMAINING SECURITY *is* SUFFICIENT.

CONVEYANCE BY MORTGAGOR AND BY MORTGAGEES FOR TERM WHO ARE SATISFIED WITH REMAINING SECURITY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor and mortgagor*), of the first part, C. D., of, &c., and E. F., of, &c. (*mortgagees*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and the said C. D. and E. F. of the other part, the hereditaments hereinafter described were (with other hereditaments) demised by the said A. B. unto the said C. D. and E. F. for the term of one thousand years, subject to a proviso for the cesser of the said term upon payment by the said A. B. to the said C. D. and E. F. of the sum of £—— with interest thereon on a day now past: AND WHEREAS the said A. B. has agreed to sell the hereditaments hereinafter described to the said G. H. at the price of ——: AND WHEREAS the said C. D. and E. F., being satisfied that their said mortgage debt is otherwise sufficiently secured, have agreed to join in these presents in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said G. H. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys, and the said C. D. and E. F., as mortgagees, by the direction of the said A. B. and to the intent that the said term of one thousand years created by the hereinbefore recited indenture, may, so far as regards the hereditaments intended to be hereby conveyed, be merged and extinguished in the freehold and inheritance of the same, hereby surrender unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple, freed and discharged from all principal money and interest secured by, and all claims and demands under the said indenture of mortgage:

Parties.

Recite mortgage for a term.

Agreement for sale.

That mortgagees are satisfied of sufficiency of remaining security.

Witnessing part.

Consideration.

Mortgagor conveys and mortgagees surrender

parcels

to purchaser in fee,

free from mortgage debt.

CONVEYANCE BY MORTGAGOR AND BY MORTGAGEES FOR TERM WHO ARE SATISFIED WITH REMAINING SECURITY.

Acknowledgment by mortgagor and mortgagees of right to production of deeds, and undertaking by mortgagor for safe custody.

And the said A. B., C. D., and E. F. (*h*) hereby acknowledge the right of the said G. H. to production of the documents of title mentioned in the schedule hereto (which documents are retained by them as relating also to other property), and to delivery of copies thereof, and the said A. B. hereby undertakes for the safe custody of the said documents.

In witness, &c.

The Schedule above referred to.

No. XXXI.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY MORTGAGOR AND MORTGAGEE.

CONVEYANCE *of* Freeholds *and* Covenant *to* Surrender Copyholds *by a* Mortgagor *and* Mortgagee *to a* Purchaser (*i*).

Parties.

Recite indenture of mortgage of freeholds.

THIS INDENTURE, made the —— day of ——, Between C. D., of, &c. (*mortgagee*), of the first part, A. B., of, &c. (*vendor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: Whereas by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and the said C. D. of the other part, the freehold and copyhold hereditaments hereinafter described were conveyed and covenanted to be surrendered to the use of the said C. D., his heirs and assigns, subject as to the said freehold hereditaments to a

Form of acknowledgment and undertaking when sale is made by mortgagor and mortgagees.

(*h*) Although the documents will be in the actual custody of the mortgagees, and not of the mortgagor, it is apprehended that they may properly be treated as retained by mortgagor and mortgagees within the meaning of sect. 9 of the Conveyancing Act, so as to enable the mortgagor to give a statutory undertaking for safe custody. But whether this is so or not, there can be no doubt that an undertaking so given will bind in equity all persons who from time to time hold the deeds with notice of the undertaking. The mortgagees are not made to join in the undertaking, because it is considered that they would object to do so.

(*i*) Simultaneously with the execution of this deed, the mortgagee should sign a warrant to the steward of the manor to enter up satisfaction of the conditional surrender on the rolls of the manor.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY MORTGAGOR AND MORTGAGEE.

proviso for the redemption thereof upon payment by the said A. B. to the said C. D. of the sum of £1,000, with interest thereon, on a day now past, and as to the said copyhold hereditaments subject to a condition to be inserted in the surrender thereof corresponding with the said proviso for redemption: AND WHEREAS in pursuance of the covenant in that behalf contained in the said indenture, the said copyhold hereditaments were on or about the —— day of —— surrendered out of court by the said A. B. to the use of the said C. D., his heirs and assigns, according to the custom of the manor of——, of which the same are holden, subject to a condition for making void the said surrender upon payment of the said sum of £1,000, with interest thereon as aforesaid: AND WHEREAS, &c. (*Recite agreement for sale by A. B. to E. F., for £2,000—that said principal sum of £1,000 is still due, supra*, p. 244): AND WHEREAS it has been agreed that the said sum of £1,000 shall be paid to the said C. D. out of the said purchase-money, and that the said C. D. shall join in these presents in the manner hereinafter expressed, and that immediately after the execution of these presents, satisfaction of the said conditional surrender shall be entered up on the rolls of the said manor: NOW THIS INDENTURE WITNESSETH, that (*Conveyance of freeholds as in testatum of Precedent No. XXIX., supra*, p. 244): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, with the privity of the said C. D., hereby, &c. (*Covenant to surrender copyholds, see supra*, p. 223, *adding as follows*), freed and discharged from all principal money and interest secured by, and all claims and demands under the said indenture of mortgage and the said conditional surrender or either of them (*Declaration as to apportionment of purchase-money for purpose of Stamp Act, supra*, p. 234).

Conditional surrender of copyholds.

Agreement for sale.

That mortgage money is owing.

Agreement that mortgage debt shall be paid out of purchase-money.

First testatum.

Conveyance of freeholds.

Second testatum.

Covenant to surrender copyholds.

IN WITNESS, &c.

No. XXXII.

ASSIGNMENT OF LEASEHOLDS BY MORTGAGOR AND MORTGAGEE.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGOR *and* MORTGAGEE *by* SUBDEMISE, *the* MORTGAGE DEBT *being paid out of the* PURCHASE-MONEY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor and mortgagor*), of the first part, C. D., of, &c. (*mortgagee*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture

Recite lease.

of lease (*Recite lease to A. B. for ninety-nine years*):

Mortgage by sub-demise.

AND WHEREAS, by an indenture dated, &c., and made, &c. (*date and parties*), the said premises were demised by the said A. B. unto the said C. D. for the residue of the said term of ninety-nine years, except the last ten days thereof, subject to a proviso for the redemption thereof upon payment by the said A. B. to the said C. D. of the sum of £500, with interest thereon, on a day

Agreement for sale.

now past: AND WHEREAS the said A. B. hath agreed to sell to the said G. H. the premises comprised in the said indenture of lease, for the unexpired residue of the said term of ninety-nine years therein, subject to the said rent, covenants, and conditions,

Sum still due on mortgage.

at the price of £1,000: AND WHEREAS the sum of £500 is still due on the security of the said indenture of mortgage, but all interest for the same has been paid up to the date of these presents:

Arrangement that debt shall be paid out of purchase-money.

AND WHEREAS upon the treaty for the said purchase it was agreed that the said mortgage debt of £500 should be paid out of the said purchase-money or sum of £1,000: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*Considerations to mortgagee and vendor, supra*, p. 244),

Vendor assigns and mortgagee surrenders premises to purchaser for residue of term and so that derivative term shall merge.

the said A. B., as beneficial owner, hereby assigns, and the said C. D. as mortgagee at the request of the said A. B., and to the intent that the derivative term created by the said indenture of mortgage shall be merged and extinguished in the term of ninety-nine years created by the said indenture of lease as aforesaid, hereby surrenders unto the said G. H. THE piece or parcel of land, hereditaments, and premises comprised in and demised by the said indenture of lease: TO HOLD the same unto the said G. H., for all the residue now unexpired of the said

term of 99 years, subject to the rent reserved by the said indenture of lease, and the covenants and conditions in the same indenture contained, and henceforth on the part of the lessee to be observed and performed, but freed and discharged from all principal money and interest secured by, and all claims and demands under the said indenture of mortgage (*Covenant by G. H. with A. B. to pay rent and perform covenants, and keep vendor indemnified therefrom, supra*, p. 225).

ASSIGNMENT OF LEASEHOLDS BY MORTGAGOR AND MORTGAGEE.

Subject to rent and lessee's covenants.

In witness, &c.

No. XXXIII.

CONVEYANCE *of* Freeholds *by a* Mortgagee *under a* Power *of* Sale, *conferred by the* Mortgage Deed *or under the* Statutory Power (*k*).

CONVEYANCE BY MORTGAGEE UNDER POWER.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: Whereas by an indenture dated the —— day of ——, and made between G. H. of the one part, and the said A. B. of the other part, the hereditaments hereinafter described were (with other hereditaments) conveyed by the said G. H. unto and to the use of the said A. B. in fee simple, subject to a proviso for the redemption of the said hereditaments, on payment by the said G. H. to the said A. B. of the sum of £2,000, with interest thereon, on the —— day of —— then next; [And by the indenture now in recital it was declared that it should be lawful for the said A. B., his executors, administrators, or assigns, at any time or times without any further consent on the part of the said G. H., his heirs or assigns, to sell the said hereditaments, or any part or parts thereof, either together or in lots, and either by public auction or by private contract, and subject to any conditions as to title or otherwise, as the said A. B., his executors, administrators, or assigns, should think fit, with power

Parties.

Recite mortgage to vendor.

Power of sale in mortgagee.

(*k*) Conveyancing Act, 1881, sects. 19—22.

CONVEYANCE BY MORTGAGEE UNDER POWER.

for the said A. B., his executors, administrators, or assigns, to execute assurances and give effectual receipts for the purchase-money, and do all other acts and things necessary or expedient for completing such sale]: AND WHEREAS in exercise of the power of sale contained in the said indenture [*or* vested in him by statute], the said A. B. hath agreed to sell the said hereditaments to the said C. D. at the price of £——:

Agreement for sale.

Conveyance by mortgagee to purchaser.

NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as mortgagee, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple; and the said A. B. hereby acknowledges the right of the said C. D. to production of the documents mentioned in the schedule hereto, and to the delivery of copies thereof.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXXIV.

ASSIGNMENT BY MORTGAGEE UNDER STATUTORY POWER.

ASSIGNMENT *of* LEASEHOLDS *by a* MORTGAGEE *by* DEMISE *under the* STATUTORY POWER *of* SALE.

THIS INDENTURE, made the —— day of ——, 18—,

Parties.

BETWEEN A. B., of, &c., (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture

Recite lease.

of lease dated, &c., and made, &c., (*date and parties*), ALL that, &c. (*parcels as described in lease*), were demised unto the said E. F., his executors, administrators, and assigns, from the —— day of ——, 18—, for the term of sixty years thence next ensuing at the yearly rent of £——, and subject to the covenants and conditions in the said indenture contained, and on the lessee's part to be observed and performed: AND WHEREAS by an indenture dated, &c. (*date and parties*), the messuage and

Mortgage by demise.

ASSIGNMENT OF LEASEHOLDS BY MORTGAGEE UNDER STATUTORY POWER.

premises comprised in the said indenture of lease were demised by the said E. F. unto the said A. B., his executors, administrators, and assigns, for the residue of the said term of sixty years (except the last day thereof), subject to a proviso for making void the said demise upon payment by the said E. F. to the said A. B., his executors, administrators, and assigns, of the sum of £——, with interest thereon on the —— day of —— then next: And by the said indenture it was declared that after the sale of the said premises under the statutory power of sale, the said E. F., his executors, administrators, and assigns, should stand possessed of the said premises for the last day of the said term of sixty years, in trust for the purchaser, and to be assigned and disposed of as he might direct: AND WHEREAS the said A. B., in exercise of the statutory power of sale, has agreed to sell the said messuage and premises to the said C. D. for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt, &c.*), the said A. B., as mortgagee, hereby assigns unto the said C. D., the messuage and premises comprised in and demised by the said indenture of lease: To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of sixty years wanting one day for which the said premises were demised by the said indenture of mortgage subject to the rent reserved by the said indenture of lease, and to the covenants and conditions therein contained and on the lessee's part to be observed and performed, and to the intent also that the said C. D. shall be entitled to the benefit of the declaration of trust of the last day of the said term of sixty years contained in the said indenture of mortgage.

Agreement for sale.

Witnessing part.

Assignment of premises to purchaser for residue of derivative term created by mortgage and with benefit of declaration of trust as to last day of original term.

IN WITNESS, &c.

No. XXXV.

CONVEYANCE BY EXECUTOR OF MORTGAGEE UNDER STATUTORY POWER.

CONVEYANCE *of* FREEHOLDS *and* LEASEHOLDS *by the* EXECUTOR *of a* MORTGAGEE *under the* POWER OF SALE CONFERRED *by the* CONVEYANCING ACT, 1881 (*l*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*executor of mortgagee and vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part. Recite lease. WHEREAS, &c. (*Recite lease to G. H. for 99 years, and mortgage of freeholds and leaseholds to X. Y. to secure £1,000 and interest*): Mortgage of freeholds and leaseholds. AND WHEREAS the said X. Y. died on the —— day of ——, 1883, having made his Will of X. Y. whereby he appointed vendor his executor. will dated the —— day of —— whereby he appointed the said A. B. sole executor of his said will, and the said will was duly proved by the said A. B. on the —— day of —— in the ——; Agreement by vendor to sell under statutory power. AND WHEREAS in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881, the said A. B. hath agreed to sell to the said C. D. the freehold and leasehold hereditaments hereinafter described at the price of £——: NOW Consideration. THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the Conveyance of freeholds to purchaser. said A. B. as the personal representative of the said X. Y. hereby conveys unto the said C. D. ALL, &c. (*freehold parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple:

Devolution of trust and mortgaged estates. (*l*) The Conveyancing Act, 1881, enacts, that in cases of deaths occurring after the 31st December, 1881, "where an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust or by way of mortgage in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time in like manner as if the same were a chattel real vesting in them or him." (Sect. 30.) By the Effect of Copyhold Act, 1887. 48th section of the Copyhold Act, 1887, it is provided that the 30th section of the Conveyancing Act, 1881, shall not apply to copyholds vested in the tenant on the court Rolls upon any trust or by way of mortgage. According to a recent decision, the effect of the last-mentioned section is to repeal the 30th section of the Conveyancing Act, so that if a sole trustee of copyholds had died between the commencement of the last-mentioned Act and the Copyhold Act, 1887, the legal estate therein, which on his death devolved on his personal representatives, was on the passing of the Copyhold Act divested, so as to vest in his customary heir or devisee. (*In re* Mill's Trust, 37 C. D. 312.)

CONVEYANCE BY EXECUTOR OF MORTGAGEE UNDER STATUTORY POWER.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said A. B., as such personal representative as aforesaid, hereby assigns unto the said C. D. THE piece of ground, hereditaments, and premises comprised in and demised by the said indenture of lease; TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 99 years created therein by the said indenture of lease as aforesaid, subject to the rent thereby reserved, and the covenants and conditions therein contained and which henceforth on the part of the lessee ought to be observed and performed (*m*).

Assignment of leaseholds to purchaser for residue of term.

IN WITNESS, &c.

No. XXXVI.

CONVEYANCE SUBJECT TO MORTGAGE DEBT.

CONVEYANCE *of an* ESTATE *subject to a* MORTGAGE DEBT, *which the* PURCHASER *undertakes to* PAY OFF (*n*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite indenture of mortgage for securing £700 and interest*): AND WHEREAS the said principal sum of £700 still remains due and owing on the security of the said indenture, but all interest for the same has been paid up to the date of these presents: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments (subject

Parties.

Recite indenture of mortgage.

Principal money still due.

Agreement for sale subject to mortgage debt.

(*m*) A covenant by the purchaser to indemnify the vendor against the rent and covenants in the lease is unnecessary, because the vendor not being the original lessee will cease to be liable after he has parted with the property.

(*n*) It will be borne in mind that the above is not a convenient arrangement as regards the vendor, because if he has entered into a covenant to pay the mortgage money, he will remain liable to that covenant, and may be called upon to pay under it should the value of the property be afterwards reduced below the amount of the debt. It would be better, if the mortgagee consents, to convey free from the debt, and let a new mortgage be given by the purchaser to the mortgagee by a deed executed immediately after the conveyance.

The *ad valorem* stamp on this deed will be on the purchase-money, *plus* the £700 due to the mortgagee.

CONVEYANCE SUBJECT TO MORTGAGE DEBT.

to the said principal sum of £700 and the interest henceforth to become due for the same), at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same (subject nevertheless to the said indenture of mortgage, and the said sum of £700 thereby secured, and all interest henceforth to become due in respect of the same), unto and to the use of the said C. D. in fee simple: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his heirs, executors, administrators, or assigns, will pay the said principal sum of £——, and all interest henceforth to become due thereon, and will keep indemnified the said A. B., and his estate and effects, from all claims and demands on account thereof.

Witnessing part.

Consideration.

Vendor conveys parcels to purchaser subject to mortgage debt and interest.

Covenant by purchaser to indemnify the vendor from mortgage debt.

IN WITNESS, &c.

No. XXXVII.

CONVEYANCE *of the* EQUITY *of* REDEMPTION *in* FREEHOLDS *to a* MORTGAGEE *as* PURCHASER.

CONVEYANCE OF EQUITY OF REDEMPTION TO MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor and vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite mortgage of freeholds to C. D. to secure the sum of* £500 *and interest, and that principal is still due*): AND WHEREAS the said A. B. hath agreed to sell the said hereditaments to the said C. D. at the price of £1,000, and it has been agreed that the said mortgage debt of £500 shall be retained by the said C. D. out of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 retained by the said C. D. in full satisfaction of the principal sum of £500 so as aforesaid remaining due and owing to him upon the said mortgage security (and which last-mentioned sum the said C. D. hereby declares to be fully satisfied accordingly),

Parties.

Recite mortgage.

Agreement for sale, and that mortgage debt be retained out of purchase-money.

Witnessing part.

Considerations.

and also in consideration of the sum of £500 to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt of which last-mentioned sum of £500, making, with the said sum of £500 retained as aforesaid, the said purchase-money of £1,000, the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance by A. B to C. D. in fee simple.*)

CONVEYANCE OF EQUITY OF REDEMPTION TO MORTGAGEE.

Conveyance to purchaser in fee.

IN WITNESS, &c.

No. XXXVIII.

CONVEYANCE *by a* VENDOR *and his* MORTGAGEE *where it is desired to keep the* MORTGAGE DEBT *on foot as a protection against* MESNE INCUMBRANCES (*o*).

CONVEYANCE BY MORTGAGOR AND MORTGAGEE, THE MORTGAGE DEBT BEING KEPT ON FOOT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*mortgagor and vendor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part (*recite mortgage in fee by C. D. to A. B. to secure* £500 *and interest, and agreement by C. D. for sale of the hereditaments to E. F. for* £1,000, *and that principal sum remains due*): AND WHEREAS upon the treaty for the said purchase it was agreed that the said mortgage debt of £500 should be paid by the said E. F. to the said A. B. out of the said purchase-money, and that the said mortgage debt should be kept on foot as a protection against subsequent incumbrances in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this

Parties.

Agreement that mortgage debt and securities should be kept on foot.

Witnessing part.

(*o*) In Toulmin *v.* Steere, 3 Mer. 210, land subject to two incumbrances was sold by the owner and conveyed by him to the purchaser with the concurrence of the first mortgagee, and the first mortgage was paid off out of the purchase-money. The purchaser had through his agent constructive notice of the second incumbrance. It was held that the purchaser could not set up the first mortgage, which he had paid off, against the second incumbrance. It has been decided that the doctrine laid down in Toulmin *v.* Steere applies only where there is no contemporaneous expression of intention to the contrary, and that a simple statement in the conveyance deed of such an intention is sufficient to keep alive the prior mortgage as against a subsequent incumbrance, if any such there be. See Adams *v.* Angell, 5 C. D. 634.

CONVEYANCE BY MORTGAGOR AND MORTGAGEE, THE MORTGAGE DEBT BEING KEPT ON FOOT.

behalf, and in consideration, &c. (£500 *paid to A. B. and* £500 *to C. D., the receipt, &c.*), the said A. B., as mortgagee, by the direction of the said C. D., hereby assigns unto the said E. F. the principal sum of £500, secured by the said indenture of mortgage: To HOLD the same unto the said E. F. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the said agreement in this behalf, and for the considerations aforesaid, THE SAID A. B., as mortgagee, by such direction as aforesaid, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said E. F. in fee simple: PROVIDED ALWAYS, and it is hereby declared that the said principal sum of £500 hereby assigned shall be deemed to be a subsisting charge on the hereditaments hereby conveyed as a protection to the said E. F., his heirs and assigns against subsequent incumbrances, if any such there be, but for no other purpose.

Assignment of mortgage debt to purchaser.

Conveyance of parcels to purchaser.

Declaration that mortgage debt remains subsisting charge against incumbrances.

IN WITNESS, &c.

No. XXXIX.

BY JOINT TENANTS OR TENANTS IN COMMON.

CONVEYANCE *of* FREEHOLDS *by* TWO JOINT TENANTS *not being* TRUSTEES, *or by* TWO TENANTS IN COMMON *in* EQUAL SHARES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part (*Recite instrument creating joint tenancy or tenancy in common in vendors*): AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), THE SAID A. B. and C. D.

Recite vendor's title and agreement to sell.

Consideration.

Vendors convey

(the said A. B. as beneficial owner so far as regards one undivided moiety of the hereditaments hereinafter described, and the said C. D. as beneficial owner so far as regards the other undivided moiety thereof) (*p*), do hereby convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F., in fee simple.

BY JOINT TENANTS OR TENANTS IN COMMON.

parcels to purchaser in fee.

IN WITNESS, &c.

No. XL.

CONVEYANCE *of* FREEHOLDS *by* THREE TENANTS IN COMMON (TWO *of them being* MARRIED WOMEN) (*q*).

OF FREEHOLDS BY TENANTS IN COMMON, TWO BEING MARRIED WOMEN.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner of one-third*), of the first part, C. D., of, &c., and E., his wife (*E. being owner of one other third*), of the second part, G. H., of, &c., and I., his wife (*I. being owner of the remaining third*), of the third part, and L. M., of, &c. (*purchaser*), of the fourth part (*Recite will of X. Y. devising the property to his three sisters A. B., E., and I., their heirs and assigns, in equal shares as tenants in common—death of X. Y., on the —— day of ——, 1880, and probate of his will*): AND WHEREAS the said E. intermarried with the said C. D. on the —— day of

Parties.

Marriage of the two sisters of testator.

(*p*) Where two joint tenants, who are not trustees, sell, it is proper to make each convey a moiety as beneficial owner, thereby limiting to a moiety his liability under the statutory covenant for title. See Co. Lit. 186 a, where Lord Coke, speaking of joint tenants, says:—"And albeit they are so seised (*i.e. per mie et per tout*), yet to divers purposes each of them has but a right to a moiety, as to enfeoff, give, or demise. And where all the joint tenants join in a feoffment, every one of them in judgment of law doth give but his part. And Littleton afterwards in this chapter saith, that one joint tenant hath one moiety in law, and the other the other moiety."

Each of the two joint tenants should convey a moiety as beneficial owner.

It follows that the form of a conveyance by two joint tenants may be the same as by two tenants in common.

(*q*) The two sisters having married before 1883, and the testator having died before that date, this deed must be acknowledged by the married women. If the testator had died subsequently to 1882, the shares would have been separate property by virtue of the Married Women's Property Act, 1882, and in that case an acknowledgment would have been unnecessary.

OF FREEHOLDS BY TENANTS IN COMMON, TWO BEING MARRIED WOMEN.

——, 1878, and the said I. intermarried with the said G. H. on the —— day of ——, 1879; AND WHEREAS the parties hereto of the first, second, and third parts have agreed, &c. (*agreement for sale, see supra*, p. 256): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said parties hereto of the first, second, and third parts, paid by the said L. M., &c. (*the receipt, &c.*), THE SAID parties hereto of the first, second, and third parts (the said A. B., as beneficial owner so far as regards one undivided third part of the hereditaments hereinafter described, the said C. D. and E., his wife, as beneficial owners so far as regards one other undivided third part thereof, and the said G. H. and I., his wife, as beneficial owners so far as regards the remaining one undivided third part thereof), do by this deed acknowledged by the said E. D. and I. H., pursuant to the statute in that behalf, convey unto the said L. M., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said L. M., in fee simple.

Agreement for sale.

Witnessing part.

Consideration.

Conveyance by the three tenants in common and the husbands of the two sisters.

To purchaser in fee.

IN WITNESS, &c.

No. XLI.

BY SEVERAL TENANTS IN COMMON WHERE ONE SHARE HAS BEEN CONVEYED ON TRUST FOR SALE.

CONVEYANCE *of* FREEHOLDS *by several* TENANTS *in* COMMON, *the* SHARE *of one having been assured upon* TRUST *for* SALE *and being now* CONVEYED PURSUANT *to the* TRUST.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner of two undivided fourth parts of the hereditaments*), of the first part, C. D., of, &c. (*owner of one other undivided fourth part*), of the second part, E. F., of, &c., and G. H., of, &c. (*trustees for sale of the remaining one undivided fourth part*), of the third part, and I. K., of, &c. (*purchaser*), of the fourth part: WHEREAS X. Y., late of, &c., deceased, being seised in fee simple of the hereditaments hereinafter described, made his will, dated, &c., and thereby, after certain specific devises not affecting the said hereditaments, the said

Parties.

Recite devise of real estate to sons in unequal shares.

BY SEVERAL TENANTS IN COMMON WHERE ONE SHARE HAS BEEN CONVEYED ON TRUST FOR SALE.

testator devised and bequeathed all the residue of his real estate as follows: as to two undivided fourth parts or shares thereof unto his son the said A. B., and as to one other undivided fourth part or share thereof unto his son the said C. D., and as to the remaining one undivided fourth part or share thereof unto his son L. M. (since deceased): AND WHEREAS, &c. (*Recite death of testator and probate of his will*): AND WHEREAS (*Recite will of L. M., giving all his real and personal estate to E. F. and G. H. upon trust for sale—death of L. M. and probate of his will*): AND WHEREAS the parties hereto of the first, second, and third parts have agreed to sell the hereditaments hereinafter described to the said I. K., at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— (being two fourth parts of the said purchase-money of £——) to the said A. B., the sum of £—— (being one other fourth part of the said purchase-money) to the said C. D., and the sum of £—— (being the remaining one fourth part of the said purchase-money) to the said E. F. and G. H., respectively paid by the said I. K. on or before the execution of these presents (the receipt of which several sums respectively the said A. B. and C. D., and the said E. F. and G. H., do hereby respectively acknowledge) THE SAID parties hereto of the first, second, and third parts (the said A. B., as beneficial owner so far as regards two undivided fourth parts or shares of the said hereditaments, the said C. D., as beneficial owner so far as regards one other undivided fourth part or share thereof, and the said E. F. and G. H. as trustees so far as regards the remaining one undivided fourth part or share thereof, do hereby convey unto the said I. K., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said I. K., in fee simple.

Agreement for sale.

Witnessing part.

Parties of the first, second, and third parts convey parcels

to purchaser in fee.

IN WITNESS, &c.

No. XLII.

CONVEYANCE BY TENANTS IN COMMON, ONE OF THEM BEING AN INFANT.

CONVEYANCE *by* TENANTS *in* COMMON. COVENANTS *by the* FATHER *of one of the* VENDORS, *who is an* INFANT, *that he shall join on his attaining* TWENTY-ONE, *and* DECLARATION *of* TRUST *as to his* SHARE *in the* PURCHASE-MONEY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner of one moiety*), of the first part, C. D., of, &c. (*the infant owner of other moiety*), of the second part, E. F., of, &c. (*father of the infant*), of the third part, G. H., of, &c., and I. K., of, &c. (*trustees*), of the fourth part, and L. M., of, &c. (*purchaser*), of the fifth part (*Recite will of X. Y. devising the property to A. B. and C. D. as tenants in common,—agreement for sale by A. B. and C. D. to L. M.*): AND WHEREAS the said C. D. is under the age of twenty-one years, and he will attain that age on the —— day of ——, 18—, if he lives so long: AND WHEREAS the said E. F. hath agreed to enter into such covenants as are hereinafter contained, for securing the confirmation of this conveyance by the said C. D. on his attaining the age of twenty-one years, and it hath also been arranged that the sum of £——, being the share of the said C. D. in the said purchase-money shall be held by the said G. H. and I. K. upon the trusts hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— by the said L. M. paid to the said A. B. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), and also in consideration of the sum of £—— by the said L. M. placed in the hands of the said G. H. and I. K. to be held by them on the trusts hereinafter mentioned (the receipt of which last-mentioned sum of £—— the said G. H. and I. K. hereby acknowledge), the said A. B. and C. D. (the said A. B. as beneficial owner so far as regards one undivided moiety of the hereditaments hereinafter described, and the said C. D. as beneficial owner so far as regards the other undivided moiety thereof), do hereby convey unto the said L. M., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said L. M. in fee simple: AND THE SAID E. F. hereby covenants

Agreement for sale by tenants in common.

Infancy of one of the tenants in common, and arrangement as to his share.

Witnessing part.

Conveyance by tenants in common,

to purchaser.

Father of

with the said L. M. (*r*), that the said C. D. shall confirm these presents within one calendar month next after he shall have attained the age of twenty-one years, or in the event of the death of the said C. D. before he shall have attained that age, leaving the said E. F. his heir-at-law, then that he the said E. F. shall and will confirm these presents within one calendar month next after the decease of the said C. D.: And that in the meantime the said L. M., his heirs and assigns, shall, from the date of these presents, have quiet and uninterrupted possession of the moiety of the said C. D. of and in the said hereditaments, and shall receive the rents and profits thereof, for his and their absolute use and benefit, without any interruption, claim, or demand from or by the said C. D., or any person lawfully claiming under him or on his behalf: And it is hereby declared that the said G. H. and I. K., their executors and administrators, shall at once invest the sum of £—— so placed in their hands in the 2¾ per Cent. Consolidated Stock, and shall accumulate the dividends thereof during the infancy of the said C. D., and subject thereto the said stock, and the dividends thereof, shall go as follows, that is to say: If these presents shall be confirmed by the said C. D., or the said E. F. as his heir, pursuant to the covenant of the said E. F. hereinbefore contained, Then in trust for the said C. D., or the said E. F., absolutely: But if these presents shall not be confirmed as aforesaid, Then in trust for the said L. M. absolutely.

In witness, &c.

CONVEYANCE BY TENANTS IN COMMON, ONE OF THEM BEING AN INFANT.

infant covenants that infant shall join on attaining his majority.

and that purchaser shall have quiet possession in the meantime.

Declaration of trust as to infant's share in purchase-money.

No. XLIII.

CONVEYANCE *of an* Undivided Moiety *in* Freeholds *by one* Tenant *in* Common *to his* Co-tenant.

OF ONE MOIETY TO TENANT OF OTHER MOIETY.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-*

(*r*) By the 58th section of the Conveyancing Act, 1881, it is provided, that a covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

OF ONE MOIETY TO TENANT OF OTHER MOIETY.

chaser), of the other part (*Recite conveyance to A. B. and C. D., their heirs and assigns, as tenants in common*) : AND WHEREAS the said A. B. hath agreed to sell his moiety of the said hereditaments to the said C. D., at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D., ALL that the one undivided moiety of the said A. B. of and in (*parcels*) : TO HOLD the same unto and to the use of the said C. D., in fee simple.

Agreement by one tenant in common to sell to the other.

Consideration.

Vendor conveys to purchaser.

IN WITNESS, &c.

No. XLIV.

ASSIGNMENT OF REVERSIONARY SHARES IN PROCEEDS OF SALE.

ASSIGNMENT *by the Owners of* TWO THIRD PARTS *of moneys to arise from the sale of* FREEHOLD HEREDITAMENTS *which are impressed with a* TRUST *for* SALE *after the death of the tenant for life—the* OWNER *of the* REMAINING THIRD PART *being the* PURCHASER, *and* ELECTING *to take the entirety as* REAL ESTATE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner of one third part of reversionary proceeds*), of the first part, C. D., of, &c. (*owner of one other third part of said reversionary proceeds*), of the second part, and E. F., of, &c. (*purchaser*), of the third part (*Recite will of X. Y. devising real estate to G. H. for life, and after his decease to trustees, upon trust to sell the same, and to stand possessed of proceeds of sale in trust for all the children of testator who should be living at his decease, and should attain the age of twenty-one years in equal shares—Death of testator, and probate of his will*) : AND WHEREAS there were issue of the said X. Y. living at his decease five children and no more, viz., the said A. B., C. D., and E. F., all of whom have attained the age of twenty-one years, and two other children, who died under that age : AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. their

Will giving property to tenant for life with remainder to trustees in trust to sell for benefit of children.

That there were three children.

Agreement for sale of two-thirds.

ASSIGNMENT OF REVERSIONARY SHARES IN PROCEEDS OF SALE.

respective two third parts or shares of the moneys to arise from the sale of the hereditaments devised by the said will as aforesaid, and of the rents and profits of the said hereditaments from and after the decease of the said G. H. until the sale thereof, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B. and C. D., as beneficial owners, do hereby respectively assign unto the said E. F., ALL THOSE the two several third parts or shares of them the said A. B. and C. D. respectively of and in the moneys to arise from the sale of the hereditaments devised by the said will of the said X. Y. upon trust for the sale thereof, after the decease of the said G. H. as aforesaid, and of the rents and profits of the said hereditaments from and after the decease of the said G. H. until the sale thereof: TO HOLD the same unto the said E. F., absolutely: AND IT IS HEREBY declared by the said E. F. that the said hereditaments shall henceforth (subject to the life interest of the said G. H. therein) be held and enjoyed by the said E. F. in fee simple, as real estate, freed and discharged from the trust contained in the said will for the sale thereof after the decease of the said G. H. as aforesaid (*s*).

Witnessing part.

Consideration.

The owners of two-thirds assign

two equal third parts of moneys to arise from sale,

to owner of remaining one-third absolutely.

Declaration by purchaser that hereditaments shall be held discharged from trust for sale.

IN WITNESS, &c.

(*s*) After the execution of this assurance E. F. will enjoy the property, discharged from the trust for sale, as real estate, so that the legacy duty which would otherwise have been payable upon the sale moneys will become a charge upon the land itself, and must therefore be paid off before the estate can be sold to a future purchaser free from incumbrances. The duty in such a case must be paid upon a sum representing the actual value of the property.

No. XLV.

CONVEYANCE BY SURVIVING COPARCENER AND HER MORTGAGEE AND DEVISEES IN COMMON OF DECEASED COPARCENER.

CONVEYANCE *by* SURVIVING COPARCENER *and her* MORTGAGEE *and the* DEVISEES *in* COMMON *of a* DECEASED COPARCENER *to a* PURCHASER.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee of one moiety*), of the first part, C. D., of, &c. (*mortgagor of the same moiety*), of the second part, E. F., of, &c. (*owner of one fourth share*), of the third part, G. H., of, &c. (*owner of remaining fourth share*), of the fourth part, and I. K., of, &c. (*purchaser*), of the fifth part: WHEREAS X. Y., late of, &c., died on the —— day of —— intestate, being at the time of his death seised in fee simple of the hereditaments hereinafter described, and leaving the said C. D. and N. O. his only daughters and co-heiresses at law: AND WHEREAS the said N. O. made her will, dated the —— day of ——, and thereby devised all her real estate unto the said E. F. and G. H., as tenants in common, in equal shares: AND WHEREAS the said N. O. died on the —— day of ——, without having revoked or altered her said will, which was shortly afterwards duly proved in the Probate Registry at —— of the High Court of Justice: AND WHEREAS (*Recite mortgage by C. D. of her share to A. B. to secure* £200, *and that principal sum is due—Agreement by C. D., E. F., and G. H. for the sale of the property to I. K. for* £1,000—*Agreement that A. B.'s mortgage debt shall be paid out of the share of C. D. in the purchase-money*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 to the said A. B., the sum of £300 to the said C. D., the sum of £250 to the said E. F., and the sum of £250 to the said G. H., respectively, paid by the said I. K., on or before the execution of these presents (the receipt of which several sums making together the said purchase-money of £1,000 the said A. B., C. D., E. F., and G. H. respectively hereby acknowledge), THE SAID A. B., as mortgagee, as to one undivided moiety of the hereditaments hereinafter described by the direction of the said C. D., as beneficial owner, hereby conveys, and the said C. D., as beneficial owner, as to the same

Death of late owner intestate, leaving his daughters his co-heiresses.

Will of one co-heiress, her death and probate of will.

Mortgage by other co-heiress.

Agreement for sale.

Witnessing part.

Consideration.

All parties convey to purchaser in fee.

moiety hereby conveys and confirms, AND the said E. F., as beneficial owner, as to one undivided fourth part or share of the said hereditaments, AND the said G. H., as beneficial owner, as to the remaining one undivided fourth part or share of the said hereditaments, hereby respectively convey unto the said I. K. (*parcels—habendum to I. K. in fee simple*).

CONVEYANCE BY SURVIVING COPARCENER AND HER MORTGAGEE AND DEVISEES IN COMMON OF DECEASED COPARCENER.

IN WITNESS, &c.

No. XLVI.

CONVEYANCE *of* FREEHOLDS *to* TENANTS *in* COMMON, *who* ADVANCE *the* PURCHASE-MONEY *in* EQUAL SHARES.

CONVEYANCE OF FREEHOLDS TO TENANTS IN COMMON.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. and E. F., of, &c. (*purchasers*), of the other part, WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. and E. F. in equal shares, on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F. as tenants in common in fee simple.

Parties.

Witnessing part.

Conveyance of freeholds to the use of purchasers as tenants in common.

IN WITNESS, &c.

No. XLVII.

CONVEYANCE *of* FREEHOLDS *to* PURCHASER *under a* POWER *of* ATTORNEY *executed by the* VENDOR, *who is abroad* (*t*).

CONVEYANCE UNDER POWER OF ATTORNEY.

THIS INDENTURE, made the —— day of ——. (*This deed will be in the same form as if it were to be executed by the*

Parties.

(*t*) If the power is made irrevocable for a period not exceeding one year, and the conveyance is made within that period, the purchaser need make no inquiry as to the donor being still living. See Conveyancing Act, 1882, s. 9. He should require that the power be deposited in the Central Office under sect. 48 of the Conveyancing Act, 1881.

Where power made irrevocable for one year.

CONVEYANCE UNDER POWER OF ATTORNEY.

vendor personally, and no reference need be made in the body of the deed to the power of attorney. It will be executed by the attorney in the name of the principal, thus, A. B. by E. F. his attorney, *and the attestation clause will be* "signed, sealed, and delivered by the said A. B. by E. F., his attorney, in the presence of, &c.")

No. XLVIII.

CONVEYANCE BY MORTGAGEE HAVING POWER OF SALE AND CLAIMING AS ABSOLUTE OWNER.

CONVEYANCE *by* MORTGAGEE *whose* MORTGAGE DEED *contains* POWER *of* SALE, *and who claims* ABSOLUTE OWNERSHIP *as having been in* POSSESSION *for* TWELVE (*u*) YEARS *without* ACKNOWLEDGMENT *of* MORTGAGOR'S TITLE (*x*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple.

Mortgagee and vendor convey parcels, to purchaser in fee.

IN WITNESS, &c.

(*u*) Twelve years are now substituted for twenty years by 37 & 38 Vict. c. 57, s. 7.

(*x*) This form of conveyance is intentionally prepared without recitals. In one way or another the purchaser will get a good title. If the mortgagee has acquired an absolute ownership under the Statutes of Limitation, he can sell as owner. If, however, any question should arise as to the completeness of the ownership, the conveyance will operate as an execution of the power of sale without any express reference to it, and thus the existence of this power, and its exercise if required, obviate the necessity of the vendor proving his uninterrupted possession for the required period, and prevent the purchaser on the other hand from depending on an unmarketable title. (Johnson *v.* Mounsey, 11 Ch. D. 284.) It is assumed that the mortgage contains a clause making it unnecessary for the purchaser to ascertain that any moneys are due on the security, or whether the required notice has been given.

No. XLIX.

CONVEYANCE *of* FREEHOLDS *to two* PARTNERS, *where the* PURCHASE *is made out of the* PARTNERSHIP ASSETS (*y*).

CONVEYANCE OF FREEHOLDS TO TWO PARTNERS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D. and E. F. both of, &c., being co-partners in the trade or business of ——, at ——, and carrying on the same under the style or firm of —— (*purchasers*), of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. and E. F. out of partnership money on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. and E. F. in fee simple as part of their partnership property. [PROVIDED ALWAYS (*z*), that if either of the said partners shall die during the continuance of the partnership the survivor of them may sell the said hereditaments for the purpose of winding up the partnership affairs without the concurrence of the executors or administrators of the deceased partner, and the receipt of such survivor for the purchase-money shall effectually discharge the person paying the same therefrom, and from all liability to see to the application thereof.]

Parties.

Consideration.

Conveyance of parcels

to partners as part of the partnership property.

Power to surviving partner to sell.

IN WITNESS, &c.

(*y*) Where real estate is bought with partnership money for partnership purposes, the conveyance is sometimes taken in the name of the partners as tenants in common without disclosing the partnership.

But the form given above is recommended for general adoption. Under it the partners take the legal estate as joint tenants, and on the death of one of them the property will be liable to be sold and the proceeds divided as part of the partnership assets, unless the partnership articles provide for a different arrangement. It is considered that in the absence of any such arrangement the surviving partner can make a good title to a purchaser without the concurrence of the representatives of the deceased partner (Dart, 94; *In re* Clough, 31 C. D. 325); but it seems desirable, to prevent any question, to insert an express provision to that effect in the deed of conveyance.

Proper form of conveyance on purchase by partners.

(*z*) This proviso will be omitted if the partnership articles provide that, on the death of a partner, his share shall be taken by the surviving partner at a valuation, so that a sale will be unnecessary.

No. L.

BY SURVIVING PARTNER AND REPRESENTATIVES OF DECEASED PARTNER.

CONVEYANCE *on a* SALE *by* SURVIVING PARTNER *and the* REPRESENTATIVES *of a* DECEASED PARTNER (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*surviving partner*), of the first part, C. D., of, &c., and E. F., of, &c. (*executors of deceased partner*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS at the date of the hereinafter recited indenture the said A. B. and L. M., since deceased, carried on the business of —— at —— as partners: AND WHEREAS by an indenture dated, &c., and made, &c., the hereditaments hereinafter described were conveyed unto and to the use of the said A. B. and L. M. in fee simple as part of their partnership property: AND WHEREAS, &c. (*Recite death of L. M. and his will appointing C. D. and E. F. executors, and probate of the will by them*): AND WHEREAS the said A. B. as the surviving partner, with the concurrence of the said C. D. and E. F. as the personal representatives of the said L. M., deceased, and with a view to the winding-up of the affairs of the said late partnership, has agreed with the said I. K. to sell to him the said hereditaments at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. (*b*) paid by the said I. K. on or before the execution of these presents, with the consent of the said C. D. and E. F., testified by their executing these presents (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B. as beneficial owner hereby conveys, and the said C. D. and E. F. as such personal representatives as aforesaid hereby release and confirm unto the said G. H., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said G. H. in fee simple.

Recite that deceased and surviving partners carried on business.

Conveyance to partners.

Death of one.

Agreement for sale.

Consideration.

Conveyance by surviving partner and confirmation by representatives of deceased partner to purchaser.

IN WITNESS, &c.

(*a*) Where the representatives of a deceased partner are willing to concur, it is desirable to make them parties, particularly if there is no clause in the deed of conveyance to the partners dispensing with their concurrence. See note at p. 267.

(*b*) The surviving partner is the proper person to receive and apply the purchase-money.

No. LI.

CONVEYANCE *to* PARTNERS *as* TENANTS IN COMMON *where it is intended that the* PROPERTY *shall* NOT *be* CONVERTED *into* PERSONALTY *as between the partners* (*c*). CONVEYANCE TO PARTNERS AS TENANTS IN COMMON.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c., and E. F., of, &c., carrying on the business of ——, at ——, as partners (*purchasers*), of the other part (*Conveyance to C. D. and E. F. as tenants in common, as in Precedent No. XLVI.*): AND IT IS HEREBY AGREED AND DECLARED between and by the said C. D. and E. F. that during the continuance of their partnership the hereditaments hereby conveyed shall be used by them for the purpose of their business, and for no other purpose, unless they shall otherwise agree, but (subject to such user) the same shall be and remain the real estate of the said C. D. and E. F. in undivided moieties in equity as well as at law, and shall not be liable to be converted into money on the dissolution of the partnership by death or otherwise.

Parties.

Conveyance to partners as tenants in common.

Declaration as to user and title to the property.

IN WITNESS, &c.

No. LII.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for* SALE *under a* DEED *with consent of the* BENEFICIARY *for* LIFE. CONVEYANCE BY TRUSTEES FOR SALE.

THIS INDENTURE made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees*), of the first part, E. F., of, &c. (*beneficiary for life*) (*d*), of the second part, and G. H., of,

Parties.

(*c*) It is clear that partners may, by express agreement, negative the equitable doctrine of conversion. In that case the property will remain real estate, and not be subject to probate duty. (See Att.-Gen. *v.* Hubbuck, 13 Q. B. D. 275.)

For other precedents relating to partnership transactions, see Vol. II., "Partnership Deeds."

(*d*) Where the consent of a person is required to a sale by trustees, the consent should be given to the particular sale, and a general prospective consent to the trustees selling would (it is conceived) be insufficient. A consent to the property being put up for sale by auction is, of course, a consent to the sale which is the result of the auction. If the party whose consent is required is a lunatic, his committee can consent on his behalf by order of the judge in Lunacy.

CONVEYANCE BY TRUSTEES FOR SALE.

&c. (*purchaser*), of the third part: WHEREAS by an indenture dated, &c., and made, &c. (*date and parties*), the said E. F., in contemplation of the marriage then intended and which was shortly afterwards solemnized between him and the said —— (*wife*), conveyed the hereditaments hereinafter described unto and to the use of the said A. B. and C. D. in fee simple, In trust that after the solemnization of the said intended marriage they should, with the consent in writing of the said E. F. during his life, sell the said hereditaments: AND WHEREAS the said A. B. and C. D., with the consent of the said E. F., have agreed to sell the said hereditaments to the said G. H. for the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said G. H. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), THE SAID A. B. and C. D. as trustees, with the consent and by the direction of the said E. F. as beneficial owner (*e*), hereby convey, and the said E. F. as beneficial owner (*e*) hereby confirms unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H. in fee simple.

Recital of conveyance in trust for sale.

Agreement to sell.

Witnessing part.

Trustees with consent of beneficiary for life convey to purchaser.

IN WITNESS, &c.

No. LIII.

CONVEYANCE (*f*) *of* FREEHOLDS *and* BARGAIN *and* SALE *of* COPYHOLDS, *by* TRUSTEES *for* SALE *under a* WILL (*g*).

CONVEYANCE OF FREEHOLDS AND BARGAIN AND SALE OF COPYHOLDS BY TRUSTEES FOR SALE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., deceased, being seised in fee simple of the freehold

Parties.

Recite will of X. Y.

(*e*) In this case, as E. F. was the settlor, the covenants for title implied from his joining as beneficial owner ought not to be qualified.

(*f*) See *supra*.

(*g*) This deed contains no recital of the apportionment of the purchase-money as between the freeholds and copyholds, because, for the purpose of the Stamp Act, there being no surrender of the latter, the deed of conveyance is the principal instrument for both properties. (See *supra*, p. 234.)

hereditaments hereinafter described, and being seised in customary fee simple of the copyhold hereditaments hereinafter described, subject to the rents, suits, and services therefor due and of right accustomed, made his will, dated, &c., and thereby appointed the said A. B. and C. D. to be trustees of his said will, and, after certain devises and bequests not affecting the said freehold and copyhold hereditaments, the said testator devised and bequeathed all his real and personal estate not thereinbefore otherwise disposed of (except copyhold hereditaments) unto and to the use of his said trustees; and he thereby devised all his messuages, lands, and hereditaments, being of copyhold tenure, to such uses as his said trustees should by any deed or deeds to be executed within twenty-one years after his (the said testator's) decease, appoint; And the said testator thereby declared that his trustees should sell and convert into money the said real and personal estate, including the said copyhold hereditaments, and out of the moneys to arise from such sale should pay the said testator's funeral and testamentary expenses and debts and the legacies bequeathed by his said will, and should invest the residue of the said moneys in the manner therein mentioned: AND WHEREAS the said testator died on the —— day of ——, without having revoked or altered his said will so far as the same is hereinbefore recited, and the said will was shortly afterwards duly proved in the principal Probate Registry of the High Court of Justice: AND WHEREAS in exercise of the trust for that purpose contained in the said will, the said A. B. and C. D. have agreed to sell the freehold and copyhold hereditaments hereinafter described to the said E. F., at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*) the said A. B. and C. D. as trustees hereby convey unto the said E. F., ALL, &c. (*freehold parcels, &c., habendum unto and to the use of E. F. in fee simple, supra*, p. 216): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. and C. D. as trustees, in exercise of the power for this purpose given to them by the said will of the said X. Y. as aforesaid, and of all other powers, if any, them hereunto enabling, do hereby bargain, sell, and appoint unto the said E. F., ALL, &c. (*copyhold parcels*): TO HOLD the same unto and to the use of the said E. F., in customary fee simple, according to the

CONVEYANCE OF FREEHOLDS AND BARGAIN AND SALE OF COPYHOLDS BY TRUSTEES FOR SALE.

Death of testator.

Agreement for sale.

First witnessing part.

Conveyance of freeholds to purchaser in fee.

Second witnessing part.

Bargain and sale of copyholds to purchaser.

CONVEYANCE OF FREEHOLDS AND BARGAIN AND SALE OF COPYHOLDS BY TRUSTEES FOR SALE.

custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed. And the said A. B. and C. D. hereby acknowledge the right of the said E. F. to production and delivery of copies of the documents mentioned in the schedule hereto, which documents are retained by them as relating also to other property.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LIV.

CONVEYANCE BY TRUSTEES AND CESTUIS QUE TRUST.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *under a* TESTAMENTARY TRUST *for* SALE. *The* CESTUIS QUE TRUST *join so as to make themselves liable to* STATUTORY COVENANTS *for* TITLE (*i*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*), of the first part, E. F., of, &c. and G. H., of, &c. (*parties beneficially interested in the moneys to be produced by the sale*), of the second part, and M. N., of, &c. (*purchaser*), of the third part (*Recite will of O. P., devising the property to A. B. and C. D., upon trust to sell and to hold the moneys after payment of debts, &c., in trust for the testator's children, who being sons should attain twenty-one years, and being daughters should attain that age or marry,—death of testator and probate of his will*): AND WHEREAS, pursuant to the trust for this purpose contained in the said will, the said A. B. and C. D.

Agreement by trustees for sale.

(*i*) It is usual, when trustees have an effectual power of sale, to stipulate that the concurrence of the *cestuis que trust* shall not be required, and, indeed, without any such stipulation, their concurrence could not be insisted on. But there may be circumstances, *e.g.*, where the *cestuis que trust* have been in possession, so as to raise a question of election, in which case it would be desirable and proper to make them parties. (*Supra*, p. 188.)

have agreed to sell the hereditaments hereinafter described to the said M. N. at the price of £——: AND WHEREAS there were issue of the said testator living at his death two children and no more, namely, the said E. F. and G. H., and the said E. F. and G. H. have respectively attained the age of twenty-one years: AND WHEREAS for the satisfaction of the said M. N. the said E. F. and G. H. have consented to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said M. N. on or before the execution of these presents, with the privity of the said E. F. and G. H. (*the receipt, &c.*), THE SAID A. B. and C. D. as trustees, by the direction of the said E. F. as beneficial owner as regards one undivided moiety of the hereditaments hereinafter described, and by the direction of the said G. H. as beneficial owner as regards the other undivided moiety thereof, hereby convey, and the said E. F. and G. H. hereby confirm unto the said M. N., ALL, &c. (*parcels, habendum to M. N. in fee simple*).

IN WITNESS, &c.

CONVEYANCE BY TRUSTEES AND CESTUIS QUE TRUST.

That there were issue two children who have attained twenty-one.

Agreement by children to join.

Conveyance by trustees,

and confirmation by *cestuis que trust*

No. LV.

CONVEYANCE *under a* TESTAMENTARY TRUST *for* SALE *by* NEW TRUSTEES *appointed under a* POWER *in the* WILL—CESTUIS QUE TRUST *being* NUMEROUS, *and having* VARIOUS INTERESTS, *join so as so make themselves liable to* STATUTORY COVENANTS *for* TITLE (*k*).

CONVEYANCE UNDER TESTAMENTARY TRUST—CESTUIS QUE TRUST, HAVING VARIOUS INTERESTS, JOIN.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees*), of the first part, (*persons beneficially interested in the proceeds of the sale being very numerous, and having various interests*), of the second part, and M. N., of, &c. (*purchaser*) of the third part (*Recite will of O. P. devising the property to A. B. and X. Y., in trust for sale, and directing the*

Parties.

Recite will and death of testator.

(*k*) See p. 272, note (*i*).

CONVEYANCE UNDER TESTAMENTARY TRUST—CESTUIS QUE TRUST, HAVING VARIOUS INTERESTS, JOIN.

trustees to stand possessed of the net proceeds upon trusts creating various interests, and power to appoint new trustees,—death of testator and probate of will) : AND WHEREAS by a deed poll dated the —— day of ——, under the hand and seal of the said X. Y., the said X. Y. disclaimed all the real and personal estate devised and bequeathed by the said will, and all trusts, powers, and authorities whatsoever by the said will reposed in and given to him jointly with the said A. B., and all rights and privileges relating thereto : AND WHEREAS by an indenture dated, &c., and made, &c., the said C. D. was in exercise of the power in that behalf so as aforesaid contained in the said will, duly appointed to be a trustee of the said will in the place of the said X. Y.; and by the said indenture all the real and personal estate by the said will devised and bequeathed unto and to the use of the said A. B. and X. Y. as aforesaid was conveyed and assigned so as to become vested in the said A. B. and C. D., upon the trusts declared thereof by the said will (*recite agreement for sale by A. B. and C. D., and agreement by "the several persons parties hereto of the second part," to join, supra*, p. 273) : NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. D. as trustees by the direction of the several persons parties hereto of the second part as beneficial owners, each of whom shall be deemed to direct as beneficial owner to the extent only of a share and interest in the said hereditaments corresponding with his or her beneficial interest in the proceeds thereof as hereinbefore appears, do hereby convey, and the said several persons parties hereto of the second part, do hereby respectively confirm unto the said M. N., ALL, &c. (*parcels, &c., habendum to M. N. in fee simple*) : AND THE SAID A. B. and C. D. hereby acknowledge the right of the said M. N. to production and delivery of copies of the said recited deed poll and indenture dated respectively the —— day of —— and the —— day of ——.

Disclaimer by trustee.

Appointment of new trustee.

Witnessing part.

Conveyance by vendors to purchaser in fee.

Acknowledgment by vendors of right to production of recited deeds.

IN WITNESS, &c.

No. LVI.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for* SALE—*one of the Trustees being the* PURCHASER, *with the* CONSENT *of the persons beneficially* INTERESTED *in the* SALE MONEYS.

TO ONE OF SEVERAL TRUSTEES FOR SALE WITH CONSENT OF BENEFICIARIES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*), of the first part, E. F., of, &c., G. H., of, &c., and L. M., of, &c. (*the persons beneficially interested in the sale moneys*), of the second part, and the said C. D. (*purchaser*), of the third part: (*Recital of will devising property to A. B. and C. D. as trustees in trust for sale, and to hold proceeds for benefit of E. F., testator's wife, and his children—death of testator and probate of will*): AND WHEREAS there were issue of the said testator living at his decease two children, and no more, namely, the said G. H. and L. M., both of whom have attained the age of twenty-one years: AND WHEREAS the hereditaments hereinafter described form a portion of the real estate devised by the said will: AND WHEREAS the said C. D. has proposed to the said E. F., G. H., and L. M., that he should purchase the said hereditaments at the price of £——, notwithstanding that he is a trustee for the sale thereof, and the said E. F., G. H., and L. M., having satisfied themselves that the sum of £—— is the full value of the said hereditaments, have agreed to such proposal: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. as the trustees of the said will paid by the said C. D., on or before the execution of these presents, at the request of the said E. F., G. H., and L. M. (*the receipt, &c.*), the said A. B., as trustee, doth hereby convey, and each and every of them the said E. F., G. H., and L. M. as to a share and interest in the said hereditaments corresponding to her and his beneficial share and interest in the proceeds thereof, as beneficial owner, hereby conveys and confirms unto the said C. D., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D., in fee simple.

Parties.

Recital of will.

That testator left only two children.

That hereditaments form part of real estate comprised in will.

Proposal that one of the trustees shall purchase.

Persons interested in proceeds assent to proposal.

Consideration.

Trustees at request of *cestuis que trust* of moneys convey, and *cestuis que trust* confirm

parcels

to use of the purchaser in fee.

IN WITNESS, &c.

No. LVII.

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE.

CONVEYANCE *by* TRUSTEES *under a* POWER *of* SALE *in a* SETTLEMENT *at the request of the* TENANT *for* LIFE, *and with the* CONSENT *of his* MORTGAGEE (*l*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees*), of the first part, E. F., of, &c. (*tenant for life*), of the second part, G. H., of, &c. (*mortgagee*), of the third part, and I. K., of, &c. (*purchaser*), of the fourth part:

Recital of settlement with power of sale.

WHEREAS by an indenture dated the —— day of ——, and made, &c. (being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said E. F. and L. M., spinster, now L. his wife), the hereditaments hereinafter described were (with other hereditaments) conveyed to the use of the said E. F. and his assigns during his life without impeachment of waste, with divers remainders over: AND in the said indenture is contained a power enabling the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, at the request of the said E. F. during his life, to sell the hereditaments thereby settled, either together, &c. (*recite power of sale and to revoke uses, or any part thereof, as in settlement*):

Mortgage by tenant for life.

AND WHEREAS by an indenture dated, &c., and made between the said E. F. of the one part, and the said G. H. of the other part, the hereditaments hereinafter described were (with other hereditaments) demised by the said E. F. unto the said G. H., for the term of ninety-nine years, if the said E. F. should so long live, by way of mortgage for securing the payment to the said G. H. of the sum of £——, with interest thereon: AND WHEREAS the said principal sum of £—— still remains owing to the said

(*l*) Since the passing of the Settled Land Acts, a sale of settled land is generally made by the tenant for life under those Acts. See the next precedent. But the power conferred by the settlement may be exercised, if preferred, provided that the sale is made with the concurrence of the tenant for life or other person in whom the statutory power is vested. If the tenant for life has aliened or mortgaged his life interest or become bankrupt, the concurrence of the alienee, or incumbrancer, or trustee in bankruptcy is necessary. (Alexander *v.* Mills, L. R. 6 C. A. 124; Cooper *v.* Slight, 27 C. D. 565; Holdsworth *v.* Goose, 29 Beav. 111.)

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE.

G. H. upon the security of the last hereinbefore recited indenture: AND WHEREAS in exercise of the power of sale contained in the said indenture of settlement, the said A. B. and C. D., at the request of the said E. F., and with the consent of the said G. H., have agreed, &c. (*Agreement for sale to I. K.*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. D., as trustees, in exercise of the power for this purpose vested in them by the said indenture of settlement of the —— day of —— as aforesaid, and of all other powers (if any) them hereunto enabling, and by the direction of the said E. F., as beneficial owner, and with the consent of the said G. H., as mortgagee, HEREBY REVOKE and make void all the uses, trusts, powers, provisoes, and declarations by and in the said indenture of settlement declared and contained of and concerning the hereditaments intended to be hereby appointed, AND HEREBY APPOINT that ALL, &c. (*parcels*), shall henceforth go, remain, and be to the use of the said I. K., in fee simple (*m*): AND THE SAID E. F. hereby acknowledges the right of the said I. K. to production of the said indentures of settlement and mortgage respectively, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof, and the said G. H. hereby acknowledges the right of the said I. K. to the production and delivery of copies of the said indenture of mortgage.

Agreement for sale.

Witnessing part.

Trustees revoke uses of settlement,

and appoint parcels to purchaser in fee.

IN WITNESS, &c.

(*m*) In this case E. F. is supposed to have been the settlor as well as the tenant for life, and will be liable under the statutory covenant for title as if he had been beneficial owner in fee simple. If E. F. had not been the settlor, the following proviso should have been introduced at the end of the deed:—

"Provided always that as respects the reversion or remainder, expectant on the life estate of the said E. F. of and in the hereditaments and premises hereby conveyed his covenants for title implied by law shall not extend to the acts, deeds, or defaults of any person or persons other than and besides himself and persons claiming or to claim under or in trust for him." (See Dart, 619, 6th edition.)

Proviso qualifying statutory covenants for title.

No. LVIII.

CONVEYANCE OF FREEHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACTS.

CONVEYANCE *of* FREEHOLDS *by a* TENANT *for* LIFE (*n*) *under the* POWERS *of the* SETTLED LAND ACTS (*o*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, C. D., of, &c.,

Form of conveyance where tenant for life is married woman.

(*n*) If the tenant for life is a married woman, and she is entitled for her separate use, whether with or without restraint on anticipation, the conveyance will be in the same form, substituting "she" for "he" and "her" for him," when necessary. If she is not so entitled, she and her husband will convey together as beneficial owners, but the deed need not be acknowledged. (Sect. 61.)

Powers conferred on the tenant for life by Settled Land Act.

(*o*) By the 3rd section of the Settled Land Act, 1882, a tenant for life beneficially entitled to possession of land which is the subject of a settlement as defined by sect. 2, or of any estate or interest therein, is empowered to sell the same, or any easement, right, or privilege over or in relation to the same, or to make any exchange of such land for other land, including an exchange in consideration of money paid for equality thereof, or in case of an undivided share in land to concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition; and by the 20th section he is empowered by deed to convey the property sold, exchanged, or partitioned, discharged from all the provisions of the settlement, and all estates and charges subsisting or to arise thereunder, except estates and charges created for securing money raised at the date of such deed, and leases, grants at fee farm rents, easements and privileges granted or made before such date. The purchase-money must be paid either to the trustees of the settlement or into Court, at the option of the tenant for life. The principal mansion-house, if any, on the settled land, and the pleasure ground and park, and lands usually occupied therewith, cannot be sold without the consent of the trustees of the settlement or an order of the Court. (Settled Land Act, 1890, s. 10.)

To whom powers of tenant for life are extended.

The powers of a tenant for life under the Act are extended to the several other persons enumerated in the 58th section when their respective estates are in possession; and sect. 2 of the Act (sub-sect. 6), provides that where there are two or more persons entitled to possession of settled land as tenants in common, or as joint tenants, or for other concurrent interests, they together shall constitute the tenant for life for the purposes of the Act.

The power of the tenant for life to sell, exchange, or partition, includes a power to enter into a contract for this purpose. (Sect. 31.)

Notice required to be given by tenant for life of intention to sell.

The tenant for life is required by the 45th section to give notice by registered letter of his intention to make a sale, exchange, or partition to each of the trustees of the settlement, and their solicitor (if any) one month before he makes the sale, exchange, or partition, or enters into a contract for the same, yet so that a person dealing in good faith with the tenant for life is not concerned to inquire whether the notice has been given. It is provided, by the 5th section of the Settled Land Act, 1884, that the notice may be of a general intention in that

and E. F., of, &c. (*trustees*), of the second part, and X. Y., of, &c., (*purchaser*), of the third part: WHEREAS by an indenture dated, &c., and made, &c., the hereditaments hereinafter described were (with other hereditaments) conveyed to the use of the said A. B. during his life, with divers remainders over, and the said C. D. and E. F., as the trustees of the said indenture, were empowered to sell the hereditaments thereby settled, or any of them, upon the request of the said A. B. during his life (*p*): AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the hereditaments hereinafter described at the price of £—— (*q*): NOW THIS INDENTURE WITNESSETH,

CONVEYANCE OF FREEHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACTS.

Recite indenture of settlement.

Agreement for sale.

behalf, and that any trustee may by writing under his hand waive notice either in any particular case or generally, and may accept less than one month's notice.

As to sales under express powers contained in settlement.

As the powers given by the Act and any express power contained in a settlement are cumulative, a sale can be made, if desired, under the express power instead of under the powers of the Act, and in that case no notice need be given to the trustees or their solicitor under the 45th section of the Settled Land Act, 1882, but the sale must be made with the consent of the tenant for life, or, where two or more persons constitute together the tenant for life, with the consent of one of such persons, whether the settlement requires such consent or not. (See sect. 56, sub-sect. 2 of the Act of 1882; and sect. 6, sub-sect. 2, of the Act of 1884.)

Definition of persons who are trustees for purposes of Act.

(*p*) The persons, if any, who are for the time being under a settlement trustees with power of sale of the settled land, or with power of consent to or approval of the exercise of such a power, or if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for the purposes of the Act, are by sect. 2, sub-sect. 8, declared to be for the purposes of the Act trustees of the settlement. If there are no such persons, the Act of 1890, sect. 16, provides for other persons being the trustees in certain cases.

Court empowered to appoint new trustees for purposes of Act.

Sect. 38 of the Act of 1882 empowers the Court where there are no trustees of the settlement within the definition in the Act, or where in any other case it may be expedient that new trustees should be appointed for the purposes of the Act, or on the application of the tenant for life, or any other person having an interest in the settled land, or in the case of an infant of his guardian or next friend, to appoint trustees, and declares that the persons so appointed, and the survivors and survivor of them, shall be the trustees or trustee of the settlement for the purposes of the Act.

(*q*) It is assumed in the above Precedent that the tenant for life has sent the notice required by sect. 45 of the settled Land Act, 1882; but as the purchaser is exempted from the duty of inquiring respecting the notice, it is not necessary to mention it in the conveyance. If the notice has not in fact been given, and the purchaser completes without notice of the omission, he will have a good title, but the tenant for life will have committed a breach of duty, rendering him liable to damages on the suit of a remainderman.

For further observations on the Settled Land Acts, see the Dissertation on Settlements in Vol. II.

CONVEYANCE OF FREEHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACTS.

Consideration.

Tenant for life conveys freeholds to purchaser.

that in consideration of the sum of £—— to the said C. D. and E. F. paid by the said X. Y. on or before the execution of these presents, by the direction of the said A. B. (*the receipt &c.*), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the said X. Y. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said X. Y. in fee simple: (*Proviso qualifying statutory covenants for title, supra*, p. 277): AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

No. LIX.

CONVEYANCE *of* COPYHOLDS *by a* TENANT *for* LIFE *under the* POWERS *of the* SETTLED LAND ACTS, *where the* PURCHASE-MONEY *is paid into* COURT (*r*).

CONVEYANCE OF COPYHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACTS.

Parties.

Recite will devising other hereditaments, being freehold of inheritance.

To use of testator's eldest son for life.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the one part, and X. Y., of, &c. (*purchaser*), of the other part: WHEREAS G. H., late of, &c., deceased, made his will dated the —— day of ——, and thereby devised all his manors, messuages, lands, tenements, and hereditaments situate in the parishes of —— and ——, in the county of ——, being freehold of inheritance, unto L. M., N. O., and P. Q., in fee simple, To the use &c. (*that testator's wife should receive a jointure*), and subject thereto To the use of his eldest son, the said A. B., during his life, without impeachment of waste, with divers remainders over;

(*r*) This deed must be entered on the court rolls, and on payment of the customary fines and fees the purchaser will be entitled to admittance. (Act of 1882, s. 20.)

CONVEYANCE OF COPYHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACTS.

And the said testator thereby devised all his messuages, lands, tenements, hereditaments, and premises in the parishes aforesaid, being copyhold, unto the said L. M., N. O., and P. Q., in trust out of the rents and profits of the said copyhold premises to pay and render the customary rents and services, and subject thereto upon such trusts and with and subject to such powers and provisions as would correspond as nearly as the difference of tenure would permit with the uses, trusts, powers, and provisions thereinbefore declared and contained concerning the said freehold hereditaments situate in the parishes aforesaid, but so as not to increase or multiply charges or powers of charging: (*Death of testator in* 1880, *and probate of his will*): AND WHEREAS the hereditaments intended to be hereby conveyed are part of the copyhold hereditaments situate in the said parish of ——, to which the said testator was entitled at the time of his decease as aforesaid, and the said L. M., N. O., and P. Q., as the trustees of the said will, were admitted tenants thereof on the —— day of ——, 18—: AND WHEREAS the said will did not confer on the trustees thereof any power of sale over the freehold or copyhold hereditaments thereby devised: AND WHEREAS by an order of the High Court of Justice (Chancery Division), made on the application of the said A. B., and dated the —— day of ——, G. H. of, &c., and I. J. of, &c., were appointed trustees of the said will for the purposes of the Settled Land Acts, 1882 to 1890: AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the said copyhold hereditaments at the price of £——: AND WHEREAS by an order of the said Court dated the —— day of ——, and made on the application of the said X. Y., it was ordered that the said X. Y. should be at liberty to pay into Court to the credit of "In the matter of the will of G. H., dated the —— day of ——, the proceeds of the sale of the —— estate, and in the matter of the Settled Land Acts, 1882 to 1890," the sum of £——, on account of the purchase-money of the said —— estate, settled by the said will: AND WHEREAS pursuant to the said order the said X. Y. has paid the said sum of £—— into Court to the account aforesaid, as appears by the receipt of one of the cashiers of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £—— paid

Devise of copyholds upon trusts corresponding with freeholds.

That hereditaments to be conveyed form part of settled copyholds.

That will did not confer on trustees power of sale.

Agreement for sale by tenant for life.

Order for payment of purchase-money into Court.

Payment of purchase-money into Court pursuant to order.

Tenant for life conveys copyholds to purchaser in customary fee simple.

CONVEYANCE OF COPYHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACTS.

by the said X. Y. as aforesaid, the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the said X. Y., ALL, &c. (*copyhold parcels*), TO HOLD the same unto the said X. Y. in customary fee simple at the will of the lord according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed. (*Proviso qualifying statutory covenants for title, supra*, p. 277.)

IN WITNESS, &c.

No. LX.

ADMISSION OF PURCHASER.

ADMISSION *of* PURCHASER *under last Precedent* (*r*).

Recital of admission of trustees of settlement.

MANOR *of* ——, *in the county of* ——. WHEREAS on the —— day of ——, 18—, L. M. of, &c. N. O. of, &c., and P. Q. of, &c., were out of court admitted tenants to the hereditaments hereinafter described, upon the surrender of A. B. of, &c., To HOLD to them and their heirs at the will of the lord according to the custom of the said manor, at and under the yearly rent of £—— and the suits and services therefor due and of right accustomed; nevertheless upon the trusts declared by an indenture dated, &c., and made, &c. (*settlement*): AND WHEREAS

That vendor was tenant for life under settlement.

under the said indenture of settlement the said A. B. was at the date of the sale hereinafter mentioned tenant for life in possession of the said copyhold hereditaments within the meaning of the Settled Land Acts: AND WHEREAS by an indenture

Conveyance by tenant for life on sale of the copyhold property to purchaser.

dated the —— day of ——, 18—, and made between the said A. B. of the one part, and X. Y. of, &c., of the other part, after reciting an agreement by the said A. B. to sell the said copyhold hereditaments to the said X. Y. for the sum of £——, and the payment of the purchase-money into Court under the provisions of the said Acts, It is witnessed that for the consideration aforesaid, the said A. B., in exercise of the powers for that

(*r*) See Settled Land Act, 1882, s. 20, sub-s. 3.

purpose vested in him by the Settled Land Act, 1882, conveyed the copyhold hereditaments hereinafter described unto the said X. Y. in customary fee simple, at the will of the lord according to the custom of the said manor, by and under the rent, suits, and services therefor due and of right accustomed: NOW BE IT REMEMBERED that on this —— day of ——, 18—, the said X. Y. comes before ——, steward of the said manor, and prays to be admitted to the copyhold hereditaments conveyed to him by the said indenture of the —— day of ——, 18—, namely: ALL, &c., (*parcels*), To which copyhold hereditaments the lord of the said manor by the said steward grants seisin thereof by the rod: To HOLD the same unto the said X. Y., and his heirs, at the will of the lord according to the custom of the said manor, at and under the rent of £—— and the suits and services therefor due and of right accustomed, AND so (saving the right of the lord,) the said X. Y. is admitted tenant thereof, and pays to the lord on such his admittance a fine of £——, and his fealty is respited.

ADMISSION OF PURCHASER.

Admittance of purchaser.

No. LXI.

ASSIGNMENT OF LEASEHOLDS *by a* TENANT FOR LIFE *under the* POWERS *of the* SETTLED LAND ACTS (*s*).

ASSIGNMENT OF LEASEHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and X. Y. of &c. (*purchaser*), of the third part (*Recite lease to A. B.*): AND WHEREAS by an indenture dated the —— day of ——, and made, &c., certain freehold hereditaments therein described were conveyed by the said A. B. to the use of the said A. B. during his

Parties.

Recite settlement whereby freehold hereditaments were conveyed to the use of A. B. for life

(*s*) Under the Act of 1882, s. 20, the tenant for life can convey the legal estate vested in the trustees of the settlement. But as the trustees are necessary parties in order to receive the purchase-money, they may reasonably be asked to join in conveying, so as to give the purchaser the benefit of their statutory covenant against incumbrances.

ASSIGNMENT OF LEASEHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACTS.

life, with remainders over, AND by the said indenture the said C. D. and E. F. were empowered to sell the said hereditaments, or any part thereof, upon the request of the said A. B. during his life, AND by the same indenture the leasehold hereditaments therein mentioned, including those comprised in the hereinbefore recited indenture of lease, were assigned by the said A. B. unto the said C. D. and E. F. for all the residue then unexpired of the several terms of years created therein by the several leases under which the same were respectively held, subject to the rents reserved by the same leases respectively, and to the covenants and conditions therein respectively contained, and on the lessee's part to be observed and performed, nevertheless in trust with and out of the rents and profits of the said premises to pay the said rents and observe and perform the said covenants and conditions, and subject thereto upon such trusts and with and subject to such powers and provisions as would correspond as nearly as the difference of tenure would permit with the uses, trusts, powers, and provisions thereinbefore declared and contained concerning the said freehold hereditaments: AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the premises comprised in the hereinbefore recited indenture of lease for the residue of the said term, subject to the said rent, covenants, and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said C. D. and E. F. paid by the said X. Y. on or before the execution of these presents by the direction of the said A. B. (*the receipt, &c.*), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys, and the said C. D. and E. F. as trustees hereby assign and confirm unto the said X. Y. ALL those pieces or parcels of land, hereditaments, and premises comprised in and demised by the said indenture of lease of the —— day of ——, 18—, To HOLD the same unto the said X. Y. for all the residue now unexpired of the said term of —— years granted therein by the said indenture of lease, subject to the rent thereby reserved, and to the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed: (*Proviso qualifying statutory covenants for title, supra,*

with remainders over, and whereby leasehold hereditaments were assigned to trustees for the residue of the terms therein upon trusts corresponding with the uses declared concerning the freeholds.

Agreement by tenant for life to sell the leaseholds.

Consideration.

Tenant for life in exercise of power conferred by Settled Land Act assigns leaseholds;

to purchaser for residue of term of —— years, subject to rent and covenants.

p. 277): And the said A. B. hereby acknowledges the right of the said X. Y. to production of the said indenture of settlement and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. (*Covenants by X. Y. with A. B.* (*t*) *to pay the rent and observe the lessee's covenants, supra*, p. 225.)

In witness, &c.

ASSIGNMENT OF LEASEHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACTS.

Acknowledgment of right of purchaser to production of settlement, and undertaking for safe custody.

No. LXII.

CONVEYANCE *under the* Settled Land Act, 1882 (*u*), *by a* Person *appointed to exercise* Powers *on* behalf *of an* Infant Tenant *in* Fee Simple *in* Possession.

CONVEYANCE UNDER SETTLED LAND ACT ON BEHALF OF INFANT TENANT IN FEE SIMPLE.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (*guardians and persons appointed to exercise powers*), of the one part, and E. F. of, &c. (*purchaser*), of the other part. Whereas G. H., late of, &c., died on the —— day of ——, 18—, intestate, seised in fee simple of the hereditaments hereinafter described, and leaving I. K., his eldest son and heir-at-law, which said I. K. is an infant of the age of —— years or thereabouts: And whereas (*Recite appointment by Court of A. B. and C. D. to be guardians of infant*): And whereas the said A. B. and C. D., on behalf of the said I. K., lately entered into a provisional contract for the sale to the said E. F. of the hereditaments hereinafter described for the sum of £——: And whereas by an order of the High Court of Justice (Chancery Division) made on the —— day of ——, 18—, in the matter, of, &c., on the application of the said A. B. and C. D., the guardians of the said I. K., it was ordered that the said A. B. and C. D. should be at liberty to exercise during the minority of the said I. K. and on his behalf the power conferred upon a tenant for life by the Settled Land Acts, in relation to the sale of land, and to sell the said hereditaments to the said E. F. for the sum of £——: And, &c. (*order authorizing*

Parties.

Recite that G. H. died intestate, leaving I. K. his heir-at-law and an infant.

Appointment by the Court of guardians of infant, and provisional contract for sale.

Order of Court authorizing sale, and payment of purchase money into Court.

(*t*) This covenant is entered into with A. B. not because he is beneficial tenant for life, but because he was the original lessee.

(*u*) Sects. 59, 60.

CONVEYANCE UNDER SETTLED LAND ACT ON BEHALF OF INFANT TENANT IN FEE SIMPLE.

the purchaser to pay the purchase-money into court, and the payment into court, supra p. 281, *mutatis mutandis*): NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the said E. F. into court as aforesaid, the said A. B. and C. D. on behalf of the said I. K., hereby convey unto the said E. F. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said E. F. in fee simple: AND WHEREAS the documents mentioned in the schedule hereto relate to the hereditaments hereby conveyed, and also to other hereditaments of greater value, and the same are in the possession of the said A. B. and C. D. as the guardians of the said I. K., Now the said A. B. and C. D. hereby acknowledge the right of the said E. F. to production of the said documents, and to delivery of copies thereof.

Guardians on behalf of infant convey lands to purchaser in fee simple, and acknowledge his right to production of documents.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LXIII.

BY TENANT FOR LIFE WITH CONCURRENCE OF MORTGAGEE OF THE FEE SIMPLE.

CONVEYANCE *of* FREEHOLDS *by a* TENANT *for* LIFE *under the* POWERS *of the* SETTLED LAND ACTS *with the* CONCURRENCE *of a* MORTGAGEE *of the* FEE SIMPLE.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN G. H. of, &c. (*mortgagee*), of the first part, A. B. of, &c. (*tenant for life*), of the second part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the third part, and X. Y. of, &c. (*purchaser*), of the fourth part: WHEREAS by an indenture dated the —— day of ——, 18—, and made between I. K. of, &c., of the one part, and the said G. H. of the other part, the hereditaments hereinafter described (with other hereditaments) were conveyed by the said I. K. unto and to the use of the said G. H. in fee simple, subject to a proviso for the redemption thereof upon payment by the said I. K. to the said G. H. of the sum of £—— with interest thereon, on a day now long past: AND WHEREAS the said I. K., &c. (*recite will of I. K., devising all his*

Parties.

Recital of mortgage.

Will of mortgagor.

real estate to use of A. B. for life, with power to C. D. and E. F. as trustees to sell—death of testator) : And whereas, &c. (*agreement by A. B. to sell to X. Y.*) : And whereas it has been agreed between the said A. B. and G. H. that the said G. H. shall release the hereditaments intended to be hereby conveyed from his said mortgage debt, and that in consideration thereof the said purchase-money and the hereditaments to be hereafter purchased therewith, and the stocks, funds, and securities in or upon which the same shall in the meantime be invested, shall be made a substituted security for the said mortgage debt: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said G. H. as mortgagee, at the request of the said A. B., hereby releases and conveys, and the said A. B. as beneficial owner hereby conveys and confirms, unto the said X. Y. All, &c. (*parcels*), To hold the same unto and to the use of the said X. Y. in fee simple: (*Proviso qualifying statutory covenants for title, supra*, p. 277) : And the said G. H. and A. B. hereby acknowledge the right of the said X. Y. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and the said A. B. hereby undertakes for the safe custody thereof:

In witness, &c.

BY TENANT FOR LIFE WITH CONCURRENCE OF MORTGAGEE OF THE FEE SIMPLE.

Agreement by mortgagee to join.

Witnessing part.

Mortgagee and tenant for life convey to purchaser.

Acknowledgment and undertaking as to documents.

The Schedule above referred to.

No. LXIV.

CONVEYANCE *of* Freeholds *by a* Tenant *for* Life *under the* Powers *of the* Settled Land Acts *with the* Consent *of a* Mortgagee *of the* Life Estate (*x*).

OF FREEHOLDS BY TENANT FOR LIFE WITH CONSENT OF MORTGAGEE.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B. of, &c. (*tenant for life*), of the first part, G. H.

Parties.

(*x*) The power of sale given by the Settled Land Act, 1882, may be exercised by a tenant for life notwithstanding that he has aliened or incumbered his life estate, but the right of the alienee or incumbrancer

OF FREEHOLDS BY TENANT FOR LIFE WITH CONSENT OF MORTGAGEE.

of, &c. (*mortgagee of life estate*), of the second part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the third part, and X. Y. of, &c. (*purchaser*), of the fourth part (*recite settlement as in precendent No. LVIII.*): AND WHEREAS by an indenture dated, &c., and made, &c., the hereditaments comprised in the said indenture of settlement were demised by the said A. B. unto the said G. H. for the term of ninety-nine years, if the said A. B. should so long live, by way of mortgage to secure payment of the sum of £—— with interest thereon: AND WHEREAS, &c. (*agreement for sale by A. B. as in last precedent*): AND WHEREAS it has been agreed between the said A. B. and G. H. that the said G. H. shall consent to the said sale, and in consideration thereof that the life interest of the said A. B. in the said purchase-money, and in the lands to be purchased therewith, and in the stocks, funds, and securities in or upon which the money shall in the meantime be invested, shall be subject to and charged with the payment of the principal sum and interest secured by the said indenture of the —— day of ——, 18—, in like manner as the life estate of the hereditaments intended to be hereby conveyed would have remained subject thereto and charged therewith if the same had not been sold: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, with the consent of the said G. H., testified by his being a party to and executing these presents, doth hereby convey unto the said X. Y., &c. (*as in last precedent to the end*).

IN WITNESS, &c.

Recital of mortgage of life estate.

Agreement that mortgagee shall consent to sale in consideration of purchase-money, &c., being made subject to mortgage.

Witnessing part.

Tenant for life with consent of mortgagee conveys.

will not be affected by any such sale without his consent (sect. 50). Having regard to the language of sect. 24, it seems open to some doubt whether, in the absence of any agreement to that effect, the purchase-money or the lands to be purchased therewith will be subject to the mortgage, and a recital of such an agreement is therefore introduced into the above precedent.

No. LXV.

DEED *whereby the* MORTGAGEES *of a* LIFE ESTATE *in settled land* CONSENT *to a* SALE *by the tenant for life under the* SETTLED LAND ACT (*y*).

CONSENT BY MORTGAGEES OF LIFE ESTATE TO SALE.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*first mortgagee*), of the first part, C. D. of, &c. (*second mortgagee*), of the second part, E. F. of, &c. (*third mortgagee*), of the third part, and G. H. of, &c. (*tenant for life*), of the fourth part: WHEREAS by an indenture dated, &c., and made, &c. (*date and parties*), certain lands and hereditaments situate in the county of ——, were settled to uses under which the said G. H. is tenant for life in possession: AND WHEREAS the said G. H. has executed mortgages of his life estate in the settled hereditaments in favour of the parties hereto of the first, second, and third parts respectively, the short particulars of which mortgages are set forth in the first schedule hereto: AND WHEREAS the said G. H. is desirous of selling the hereditaments mentioned in the second schedule hereto (being part of the settled hereditaments) under the powers of the Settled Land Acts, and he has requested the parties hereto of the first, second, and third parts respectively to give their consent to such sale, which they have agreed to do: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the premises, the said several persons parties hereto of the first, second, and third parts respectively hereby CONSENT to the said G. H. selling the hereditaments comprised in the second schedule hereto or any part thereof, under the powers of the Settled Land Acts, 1882 to 1890: AND IT IS HEREBY DECLARED that the life interest of the said G. H. in the moneys to arise from the sale of the hereditaments, and the lands to be purchased with those moneys, and the stocks, funds, and securities in or upon which those moneys shall in the meantime be invested, shall be charged with the payment of all principal sums and interest secured or intended to be secured

Parties.

Recite settlement.

Mortgages by tenant for life.

That tenant for life wishes to sell under Settled Land Acts.

Witnessing part.

Mortgagees consent to tenant for life selling.

Declaration that mortgages shall be transferred to life interest in sale moneys.

(*y*) It will often be found more convenient, where there are several mortgages on a life estate, to make the mortgagees give their consent by a separate deed instead of in the conveyance.

CONSENT BY MORTGAGEES OF LIFE ESTATE TO SALE.

by the several mortgages mentioned in the first schedule hereto in like manner as the life estate of the said G. H. in the hereditaments which shall be sold as aforesaid would have remained charged therewith and subject thereto if the same had not been sold: AND the parties hereto of the first, second, and third parts respectively, as to such of the documents mentioned in the first schedule hereto as are in their respective possession, hereby acknowledge the right of the said G. H. to production of the said documents, and to delivery of copies thereof (z).

Acknowledgment as to documents.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*To state the date of and parties to and short particulars of the several mortgage deeds.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*To describe shortly the lands intended to be sold.*)

No. LXVI.

CONVEYANCE BY TRUSTEE OF BANKRUPT.

CONVEYANCE *of* FREEHOLDS *by the* TRUSTEE *of a* BANKRUPT (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*creditors' trustee of the estate and effects of G. H.*

(z) Although under sect. 16 of the Conveyancing Act, 1881, a mortgagor is entitled to inspect documents relating to the mortgaged property, the above acknowledgment should be given, in order that the benefit of it may pass to the purchaser.

Provisions of Bankruptcy Act, 1883, as to appointment of a trustee or committee of inspection.

(*a*) The Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), has been repealed as from the 1st of January, 1884, by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), which from that date regulates the law of bankruptcy, and which, by the 21st and 22nd sections, provides that where a debtor is adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person to fill the office of trustee of the property of the bankrupt, or may resolve to leave his appointment to the committee of inspection,

of, &c., under an adjudication in the Court of Bankruptcy), of the one part, and C. D. of, &c. (*purchaser*), of the other part: CONVEYANCE BY TRUSTEE OF BANKRUPT.

and may at their first or any subsequent meeting appoint from the creditors a committee of inspection, consisting of not more than five nor less than three persons to superintend the administration of the bankrupt's property by the trustee.

Property divisible amongst creditors of bankrupt.

The 44th section declares that the property of the bankrupt divisible amongst the creditors shall comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and the capacity to exercise and take proceedings for exercising such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner, provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section. A trustee in bankruptcy cannot exercise any general power of the bankrupt by deed or will after his death. (Nichols *v.* Nixey, 29 C. D. 1005.)

Effect of testamentary power.

A testamentary power would not, it is apprehended, be a power exercisable for the benefit of the bankrupt within the last-mentioned section. If, however, he exercises the power by his will and dies during the bankruptcy, the property affected thereby, to the extent to which the power is exercised, will be assets for the benefit of his creditors thereunder. (Sug. Pow. 188, 8th ed.; Jenney *v.* Andrews, 6 Madd. 264.)

Until appointment of trustee official receiver is to act as trustee.

Until a trustee is appointed, the official receiver is the trustee for the purposes of the Act, and may, therefore, sell. (*In re* Parker, 14 Q. B. D. 407; 15 Q. B. D. 196.) On the appointment of a trustee, the property forthwith vests in him. (Sect 54.)

How vacancies in the office of trustee are to be filled up.

The creditors may, if they think fit, appoint more persons than one to the office of trustee (sect. 84), and any vacancy in the office of trustee may be filled up by the creditors in general meeting, and during any vacancy the official receiver is empowered to act as trustee. (Sect 87.)

Trustee may sell property by public auction or private contract,

and deal with estate in tail of bankrupt as bankrupt might have dealt with the same.

The 56th section empowers the trustee to sell the property of the bankrupt by public auction or private contract, to exercise any powers the capacity to exercise which is vested in the trustee under the Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect its provisions; and to deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and declares that sects. 56 to 73 (both inclusive) of the Fines and Recoveries Act (3 & 4 Wm. IV. c. 74), shall extend to proceedings in bankruptcy under the Act.

As to copyhold or customary property.

As to copyhold or customary property, or any like property passing by surrender or admittance, the 50th section empowers the trustee to deal with the same as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint, and any appointee of the trustee is to be admitted accordingly.

As to property which passes by transfer in the books of a company and choses in action.

The 50th section also provides that when any part of the property of the bankrupt consists of property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer it to the same extent as the bankrupt might have exercised it if he had not become

CONVEYANCE BY TRUSTEE OF BANKRUPT.

Order for adjudication.

Sale by auction.

Payment of deposit by purchaser.

Consideration.

Trustee conveys parcels.

WHEREAS by an order of the High Court of Justice (Queen's Bench Division) (*b*) (*or, as the case may be*, the County Court of ——), dated the —— day of ——, the said G. H. was adjudged a bankrupt, and the said A. B. was, on or about the —— day of ——, duly chosen trustee of the estate and effects of the said bankrupt: AND WHEREAS the hereditaments hereinafter described were put up for sale by public auction by the said A. B. on the —— day of ——, according to certain printed particulars: AND WHEREAS the said C. D. bid at the said auction the sum of £—— for the said hereditaments, and was declared the purchaser thereof at that price, and thereupon the said C. D. paid to the said A. B. the sum of £—— by way of deposit in part payment of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid by way of deposit as aforesaid, and also in consideration of the sum of £——, now paid by the said C. D. to the said A. B. (the receipt of which several sums of £—— and £—— making together the said purchase-money of £——, the said A. B. hereby acknowledges), the said A. B. as trustee hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

bankrupt; and that where any such property consists of things in action such things shall be deemed to have been duly assigned to the trustee.

Conveyances and contracts for value, before the date of receiving order, are valid where purchaser has had no notice of act of bankruptcy.

Subject to the provisions of the 47th and 48th sections as to the avoidance of voluntary settlements and preferences in certain cases, any payment by a bankrupt to any of his creditors, and any payment or delivery to him, any conveyance or assignment by him for a valuable consideration, and any contract, dealing, or transaction by or with him for valuable consideration, are declared to be valid, provided the payment, &c. take place before the date of the receiving order, and the person (other than the debtor) to, by, or with whom the payment, &c. were made, executed, or entered into has not at the time of such payment, &c. notice of any available act of bankruptcy committed by the bankrupt before that time. (Sect 49.)

For the section of the Act which relates to the disclaimer of leases, and observations thereon, see the Dissertation on Leases in Vol. II. pp. 30—33.

(*b*) The jurisdiction of the London Court of Bankruptcy has been transferred to the High Court of Justice, and bankruptcy business is, under the General Orders dated 1st January, 1884, assigned to the Queen's Bench Division until further order.

No. LXVII.

CONVEYANCE *of* FREEHOLDS *by the* TRUSTEE *of a* BANKRUPT *with the Concurrence of a* MORTGAGEE, *in which the* BANKRUPT JOINS (*c*).

CONVEYANCE BY TRUSTEE OF BANKRUPT WITH CONCURRENCE OF MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN O. P. of, &c. (*mortgagee*), of the first part, A. B. of, &c. (*trustee*), of the second part, E. F. of, &c. (*bankrupt*), of the third part, and G. H. of, &c. (*purchaser*), of the fourth part (*Recite mortgage from E. F. to O. P. for £——, and that principal sum is still due with interest from a certain date amounting to £——, order of adjudication, and appointment of A. B. to be trustee, supra*, p. 292): AND WHEREAS the said A. B., as such trustee as aforesaid, hath agreed to sell to the said G. H., &c. (*Agreement for sale,—Agreement that mortgagee shall be paid his debt out of purchase-money, supra*, p. 244): AND WHEREAS the said E. F. hath consented to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said O. P. paid by the said G. H., on or before the execution of these presents, by the direction of the said A. B. (the receipt whereof the said O. P. hereby acknowledges), and in consideration of the sum of £—— to the said A. B. at the same time paid by the said G. H. (the payment and receipt of which said sums of £—— and £—— respectively, in manner aforesaid, making together the said purchase-money of £——, the said A. B. hereby acknowledges) the said O. P. as mortgagee, by the direction of the said A. B. and E. F., hereby conveys and releases, and the said A. B., as trustee, hereby conveys, and the said E. F., as beneficial owner, hereby confirms unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple, absolutely discharged from the said mortgage debt of £——, and all interest for the same, and all claims and demands on account thereof.

Parties.

Agreement for sale.

Witnessing part.

Consideration.

Mortgagee, trustee, and bankrupt convey.

Parcels.

To purchaser in fee.

IN WITNESS, &c.

(*c*) The bankrupt cannot be compelled to join.

No. LXVIII.

APPOINTMENT OF COPYHOLDS BY TRUSTEE OF BANKRUPT.

APPOINTMENT *of* COPYHOLDS *by the* TRUSTEE *of a* BANKRUPT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee of the estate and effects of G. H. of, &c., a bankrupt*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said G. H. was at the date of his bankruptcy hereinafter mentioned seised of or entitled to the copyhold hereditaments hereinafter described in customary fee simple according to the custom of the manor of ——, at and under the rents, suits, and services therefor due and of right accustomed: AND WHEREAS, &c. (*Recite order of adjudication and appointment of A. B. to be trustee, supra*, p. 292): AND WHEREAS the said A. B., as such trustee as aforesaid, has agreed to sell the said copyhold hereditaments to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as trustee, in exercise of the power for this purpose vested in him under the Bankruptcy Act, 1883, and of all other powers (if any) him hereunto enabling, hereby appoints that ALL THAT, &c. (*parcels as described in the court rolls*), to all which hereditaments hereinbefore described the said G. H. was admitted tenant at a court holden in and for the said manor on the —— day of ——, shall henceforth go, remain, and be TO THE USE of the said C. D., in customary fee simple at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed.

Recital of seisin by bankrupt of copyholds.

Bankruptcy and appointment of trustee.

Agreement for sale.

Witnessing part.

Trustee appoints copyholds to purchaser in fee.

IN WITNESS, &c.

No. LXIX.

ASSIGNMENT *of* LEASEHOLDS *by the* TRUSTEE *of a* BANKRUPT.

ASSIGNMENT OF LEASEHOLDS BY TRUSTEE OF A BANKRUPT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee of the estate and effects of O. P. of, &c., a bankrupt*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease dated the —— day of ——, and made between G. H. of the one part, and the said O. P. of the other part, all that messuage or tenement, &c. (*parcels as described in the lease*), were demised by the said G. H. unto the said O. P., his executors, administrators, and assigns, from the —— day of —— then last past, for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed (*Recite order of adjudication against O. P., and appointment of trustee, supra*, p. 292): AND WHEREAS the said A. B. as such trustee as aforesaid hath agreed to sell to the said C. D. the premises comprised in the said indenture of lease for the residue of the said term of —— years subject to the said rent, covenants, and conditions at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. as trustee hereby assigns unto the said C. D., THE messuage and premises demised by the said indenture of lease, TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of —— years, subject to the rent reserved by the said indenture, and the covenants and conditions therein contained, and which henceforth on the part of the lessee ought to be observed and performed (*d*).

Parties.

Recite lease to bankrupt.

Agreement by trustee of bankrupt for sale.

Trustee assigns leaseholds, for residue of term to purchaser.

IN WITNESS, &c.

(*d*) On the sale of leaseholds by the trustee of a bankrupt, the purchaser cannot be required to enter into a covenant to indemnify him or the bankrupt against the payment of the rent, and the observance of the covenants contained in the lease, such a covenant being unnecessary, as the liability ceases on the assignment. Moreover, it would be a breach of trust on the part of the trustee to stipulate for such a covenant, as it would diminish the value of the lease to the purchaser. (Wilkins *v.* Fry, 1 Mer. 265.)

On sale of leaseholds by trustee of bankrupt, purchaser is not obliged to indemnify.

No. LXX.

CONVEYANCE OF ESTATE TAIL IN POSSESSION BY TRUSTEE OF BANKRUPT.

CONVEYANCE *by the* TRUSTEE *of a* BANKRUPT *of a* FREEHOLD ESTATE *to which he was* ENTITLED *for an* ESTATE TAIL *in* POSSESSION (*e*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), the hereditaments hereinafter described were limited to the use of L. M. for his life, and after his decease to the use of N. O. and the heirs male of his body: AND WHEREAS the said L. M. died on the —— day of ——: AND WHEREAS (*Recite order of adjudication against N. O., and appointment of trustee,—Sale by auction and payment of deposit, supra*, p. 292): NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c., the receipt, &c., the said A. B., as trustee, doth by this deed, which is intended to be enrolled in the Central Office of the Supreme Court of Judicature, convey unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple, discharged from the said estate tail of the said N. O. and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail.

Recite creation of estate tail.

Death of tenant for life.

Trustee conveys the estate to the purchaser in fee.

Discharged from estate tail and remainders over.

IN WITNESS, &c.

No. LXXI.

CONVEYANCE BY TRUSTEE IN BANKRUPTCY OF BASE FEE.

CONVEYANCE *by the* TRUSTEE *of a* BANKRUPT *of a* FREEHOLD ESTATE *to which he was* ENTITLED *for an* ESTATE TAIL *in* REMAINDER (*f*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*pur-*

(*e*) See 3 & 4 Will. 4, c. 74, s. 56; 46 & 47 Vict. c. 52, s. 56, sub-s. 5.
(*f*) See 3 & 4 Will. 4, c. 74, s. 57; 46 & 47 Vict. c. 52, s. 56, sub-s. 5.

chaser), of the other part: WHEREAS by an indenture dated, &c., and made between (*parties*), the hereditaments hereinafter described were limited to the use of L. M. for his life, and after his decease to the use of N. O. and the heirs male of his body: AND WHEREAS (*Recite order of adjudication against N. O., and appointment of A. B. as trustee, supra*, p. 292): AND WHEREAS the said A. B., as such trustee as aforesaid, hath agreed to sell to the said C. D. the benefit of a base fee expectant on the death of the said L. M., in the said hereditaments, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B. as trustee doth by this deed, which is intended to be enrolled in the Central Office of the Supreme Court of Judicature, convey unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., his heirs and assigns, subject to the life estate therein of the said L. M., discharged from the said estate tail of the said N. O., and to the intent that the same may be hereby converted into a base fee.

IN WITNESS, &c.

CONVEYANCE BY TRUSTEE IN BANKRUPTCY OF BASE FEE.

Recite creation of estate tail.

Agreement for sale of a base fee in the estate.

Trustee conveys the estate to the purchaser.

Discharged from the estate tail, and to the intent that the same may be converted into a base fee.

No. LXXII.

RELEASE *of* EQUITY OF REDEMPTION *to the* MORTGAGEE *by the* TRUSTEE *of a* BANKRUPT *in consideration of part of the Mortgage Debt* (*g*).

RELEASE OF EQUITY OF REDEMPTION BY TRUSTEE IN BANKRUPTCY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*mortgagee and purchaser*), of the other part (*Recite mortgage for £5,000 by L. M. to C. D., and bankruptcy proceedings as in last*

Parties.

Recite mortgage and bankruptcy proceedings.

(*g*) See 46 & 47 Vict. c. 52, 2nd Sched. r. 12. It would seem that, under this rule, if the trustee does not within six months signify his election to exercise the power of redeeming, &c., the equity of redemption will, thereupon, without any conveyance, vest in the mortgagee.

RELEASE OF EQUITY OF REDEMPTION BY TRUSTEE IN BANKRUPTCY.

precedent): And whereas the said C. D. proved in the said bankruptcy for the sum of £5,810, being the amount owing for principal, interest, and costs, and in his proof he valued his said security at £4,000: And whereas the said A. B., as such trustee as aforesaid, has elected not to redeem the said security, nor to require it to be realized under the provisions in that behalf contained in the second schedule to the Bankruptcy Act, 1883: And it has been agreed between him and the said C. D. that the property comprised in the said security shall be conveyed to the said C. D., free from all right or equity of redemption therein, in consideration of the sum of £4,000, part of the said mortgage debt, and that the proof of the said C. D. in the said bankruptcy shall be reduced by that sum accordingly: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £4,000, part of the said mortgage debt, and from which sum of £4,000 the said C. D. hereby releases the estate and effects of the said L. M., the said A. B., as trustee, hereby releases and confirms unto the said C. D., All the hereditaments comprised in the said indenture of mortgage, or which have by any means become subject thereto: To hold the same unto and to the use of the said C. D. in fee simple, discharged from all right or equity of redemption therein.

Proof by mortgagee of debt and value of his security, that trustee has declined to redeem, and agreement to release equity of redemption.

Witnessing part.

Trustee releases equity of redemption to mortgagee.

In witness, &c.

No. LXXIII.

CONVEYANCE BY DEVISEES UNDER TESTAMENTARY CHARGE OF DEBTS.

CONVEYANCE *of* Freeholds *by* Devisees in Trust *under a* Will *in* Exercise *of the* Power *of* Sale *vested in them under a* Charge *of the* Testator's Real Estate *with payment of his* Debts (*h*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and

Persons entitled to sell under charge of debts.

(*h*) If a testator charges his real estate or any part thereof with the payment of his debts, and then devises the same for his whole interest therein to trustees, the trustees can alone sell such property under the trust or

CONVEYANCE BY DEVISEES UNDER TESTAMENTARY CHARGE OF DEBTS.

E. F. of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., deceased, being seised in fee simple of the hereditaments hereinafter described, made his will, dated, &c., and thereby, after charging his real estate with the payment of his debts, he devised and bequeathed all his real and personal estate and effects unto and to the use of the said A. B. and C. D. their heirs, executors, administrators, and assigns, upon the trusts therein declared concerning the same, and appointed G. H. sole executor of his said will: AND WHEREAS the said testator died on the —— day of ——, and the said will was duly proved by the said G. H., on the —— day of ——, in the principal Probate Registry of the High Court of Justice: AND WHEREAS, in exercise of the power of sale now vested in the said A. B. and C. D. by reason of the said X. Y. having by his said will charged his real estate with the payment of his debts as aforesaid, they

Recite will whereby real estate was charged with testator's debts.

Death of testator and probate of his will.

Agreement by devisees in trust to exercise power of sale.

power created by the charge of debts. But if a testator does not devise such real estate so as to vest his whole interest therein in trustees, the executors will be the persons to sell under the charge of debts, and their conveyance will pass the legal as well as the equitable estate. (See 22 & 23 Vict. c. 35, ss. 14—17.)

If, however, a testator charges his real estate, or any part thereof, with the payment of his debts, and then devises the same for his whole interest therein to a devisee for his own benefit, then, although the property may be also charged by the will with annuities and legacies, the devisee, if an executor also, can confer a good title upon a purchaser without the concurrence of the annuitants or legatees, for the trust or power created by the charge of debts must override and be paramount to every beneficial gift or charge. (Eland *v.* Eland, 4 My. & Cr. 420; Forbes *v.* Peacock, 1 Ph. 717; 22 & 23 Vict. c. 35, s. 18.) When the beneficial devisee and executor are different persons, it is still undecided whether the beneficial devisee can make a good title without the executor, but the better opinion seems to be that he can. (Corser *v.* Cartwright, L. R. 7 H. L. 731; West of England and South District Bank *v.* Murch, 23 C. D. 138.)

Administrator cannot sell.

When a testator by his will charges his real estate with the payment of his debts, and the executors of the will renounce, an administrator with the will annexed has no power to sell under the above-mentioned Act. (*Re* Clay and Tetley, 16 C. D. 3.)

When express direction to sell vests power of sale in executor.

Where a will contains an express power or direction to sell real estate and to apply the proceeds in the payment of debts or legacies, or where a testator directs real and personal estate to be sold and converted into money, and the proceeds of both properties to be divided amongst certain persons as a mixed fund, and no person is named in the will in either case to exercise the power or to carry the direction into effect, the power to sell will vest in the executors, and their conveyance will carry the legal as well as the equitable estate. (Forbes *v.* Peacock, 11 M. & W. 630; Tylden *v.* Hyde, 2 Sim. & Stu. 238; Sugden on Powers, p. 118, 8th ed.) A testamentary direction to sell and divide the proceeds among certain persons, and nothing more, will not confer on the executors a power of sale if real estate is the only subject of direction.

CONVEYANCE BY DEVISEES UNDER TESTAMENTARY CHARGE OF DEBTS.

the said A. B. and C. D. have agreed to sell to the said E. F. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as trustees, in exercise of the aforesaid power, hereby convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple.

Devisees sell parcels to purchaser in fee.

IN WITNESS, &c.

No. LXXIV.

CONVEYANCE BY EXECUTORS UNDER TESTAMENTARY CHARGE OF DEBTS.

CONVEYANCE *of* FREEHOLDS *by* EXECUTORS *in* EXERCISE *of the* POWER *of* SALE *vested in them under a* CHARGE *of the* TESTATOR'S REAL ESTATE *with payment of his* DEBTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y. late of, &c., being seised in fee simple of the hereditaments hereinafter described, made his will, dated, &c., and thereby, after charging his real estate with the payment of his debts, he devised such real estate unto G. H. for his life, with remainder to the children of G. H. in manner therein mentioned, and appointed the said A. B. and C. D. executors of his said will (*Death of testator and probate of his will*): AND WHEREAS in exercise of the power of sale now vested in the said A. B. and C. D., as such executors as aforesaid, by reason of the said X. Y. having by his said will charged his real estate with the payment of his debts, they the said A. B. and C. D., as such executors as aforesaid, have agreed to sell to the said E. F. the hereditaments hereinafter described, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D., as the personal represen-

Recite will charging real estate with payment of debts.

Agreement by executors to exercise power of sale.

Consideration.

tatives of the said X. Y., deceased, paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D. as such personal representatives as aforesaid, in exercise of the aforesaid power, hereby convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple.

CONVEYANCE BY EXECUTORS UNDER TESTAMENTARY CHARGE OF DEBTS.

Executors of will sell parcels to purchaser.

IN WITNESS, &c.

No. LXXV.

CONVEYANCE *by a* DEVISEE *of* FREEHOLDS *which are* CHARGED *by the* WILL *with* DEBTS *and* LEGACIES (*i*).

CONVEYANCE BY DEVISEE OF FREEHOLDS CHARGED WITH DEBTS AND LEGACIES.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*vendor*), of the first part, and C. D., of, &c. (*purchaser*), of the second part. WHEREAS G. H., late of, &c., made his will dated, &c., whereby after charging all his real estate with the payment of his debts and legacies, and after making several pecuniary bequests, he devised and bequeathed all his real and personal estate so charged as aforesaid unto the said A. B. in fee simple, and appointed him sole executor of his said will (*Death of testator and probate of his will*): AND WHEREAS the hereditaments hereinafter described form part of the real estate devised by the said will as aforesaid: AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said hereditaments, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner (*k*), hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

Parties.

Will of G. H. whereby after charging his real estate with his debts, he devised and bequeathed all his real and personal estate to vendor.

Hereditaments hereinafter described form part of such real estate.

Agreement for sale.

Vendor conveys parcels to purchaser in fee.

IN WITNESS, &c.

(*i*) See on this subject note (*h*), *supra*, p. 298, and the remarks on "the effect of a charge of debts," in the Dissertation on Wills, in Vol. II.

(*k*) As the vendor is entitled to the surplus purchase-money after paying debts and legacies, he ought to be liable to the statutory covenants for title, and for this purpose to convey as beneficial owner.

No. LXXVI.

CONVEYANCE OF FREEHOLDS BY THE LIQUIDATORS OF A JOINT STOCK COMPANY, LIMITED.

CONVEYANCE *of* FREEHOLDS *belonging to a* JOINT-STOCK COMPANY, LIMITED, *on a sale by the* LIQUIDATORS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the —— Company, Limited, in liquidation, and A. B., of, &c., and C. D., of, &c., liquidators of the said company (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part:

Recite conveyance to company.

WHEREAS by an indenture dated, &c., and made between —— of the one part and the said company of the other part, the hereditaments hereinafter described were conveyed unto and to the use of the said company:

Extraordinary meetings of company.

AND WHEREAS at an extraordinary meeting of the shareholders of the said company, duly convened and held at the —— Hotel, in the City of London, on the —— day of ——, and at a subsequent extraordinary meeting of shareholders also duly convened and held at the said Hotel on the —— day of ——,

Resolution that company should be wound up.

the following special resolution was duly passed and confirmed, namely, that the said company be wound up voluntarily under the provisions of the Companies Acts, 1862 to 1890, and that the said A. B. and C. D. be appointed liquidators for the purpose of winding up the said company:

Appointment of liquidators.

AND WHEREAS notice of the said special resolution was duly inserted in the London Gazette on the —— day of ——:

Agreement for sale.

AND WHEREAS the said liquidators, for and on behalf of the said company, have agreed to sell to the said G. H. the hereditaments hereinafter described at the price of £——:

Consideration.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. for and on behalf of the said company paid by the said G. H. (the receipt whereof the said A. B. and C. D., and also the said company, do hereby acknowledge),

The company conveys parcels to purchaser in fee.

the said company, as beneficial owners, hereby convey unto the said G. H. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple.

IN WITNESS whereof the said company have caused their common seal to be attached to these presents, and the other parties hereto have hereunto set their hands and seals, the day and year first above written.

No. LXXVII.

CONVEYANCE *by the* ADMINISTRATOR *of a* CONVICT *of a* FREEHOLD ESTATE, *to which he was* ENTITLED *at the* DATE *of his* CONVICTION (*l*).

CONVEYANCE BY ADMINISTRATOR OF CONVICT'S PROPERTY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*administrator*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS G. H. was convicted of felony at the assizes held at —— in the month of —— last, and judgment of penal servitude was duly recorded against him by the Court of ——: AND WHEREAS by a writing under the hand of —— Her Majesty's principal Secretary of State for the Home Department, being the person authorized in that behalf by Her Majesty, dated the —— day of ——, pursuant to the provisions for this purpose contained in the Forfeiture Act, 1870 (*m*), the custody and management of the property of the said convict was committed to the said A. B. as the administrator thereof: AND WHEREAS the said G. H. was at the date of his conviction seised in fee simple of the hereditaments hereinafter described: AND WHEREAS the said A. B. as such administrator as aforesaid, pursuant to the power for this purpose vested in him by the said Act, hath agreed to sell to the said C. D. the hereditaments hereinafter described, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. as such administrator as aforesaid paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B. as such administrator as aforesaid, and who for the purpose of the statutory covenant against incumbrances shall be deemed to convey as a trustee, hereby conveys unto the said C. D. ALL, &c. (*parcels, &c.*): TO HOLD the same unto and to the use of the said C. D., in fee simple.

Parties.

Recite conviction and judgment of penal servitude.

Appointment of administrator.

That convict was seised of property.

Agreement for sale.

Administrator conveys a freehold estate, part of the convict's property, to purchaser in fee.

IN WITNESS, &c.

(*l*) See *supra*, p. 179.

(*m*) 33 & 34 Vict. c. 23.

No. LXXVIII.

CONVEYANCE OF LIFE ESTATE IN FREEHOLDS.

CONVEYANCE *of a* LIFE *Estate in* FREEHOLDS (*n*).

Parties.

Recite will under which vendor is seised for his life.

Agreement for sale of life estate.

Witnessing part.

Consideration.

Vendor conveys life estate to purchaser in fee.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS under or by virtue of the will of X. Y., late of ——, deceased, dated, &c., the said A. B. is seised of the hereditaments hereinafter described, for an estate during his life without impeachment of waste: AND WHEREAS the said A. B. hath agreed to sell his life estate in the said hereditaments to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., for all the remainder of the life of the said A. B.

IN WITNESS, &c.

No. LXXIX.

CONVEYANCE BY TENANT FOR LIFE AND REMAINDERMAN.

CONVEYANCE *by* TENANT *for* LIFE *and* REMAINDERMAN.

Parties.

Recite title of vendors.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c. (*remainderman*), of the second part, and E. F. of, &c. (*purchaser*), of the third part: WHEREAS under or by virtue of the will of X. Y., late of, &c., deceased, dated, &c., and an indenture dated, &c., and made, &c., and duly enrolled in the Central Office of the Supreme Court of Judicature as a disentailing assur-

(*n*) It will be borne in mind that A. B., the original tenant for life, will remain the person to exercise the powers conferred by the Settled Land Acts, but C. D.'s concurrence will be required.

CONVEYANCE BY TENANT FOR LIFE AND REMAINDERMAN.

ance, the said A. B. is seised of the hereditaments hereinafter described for an estate during his life without impeachment of waste, and the said C. D. is seised of the same hereditaments in fee simple in remainder expectant on the life estate of the said A. B.: AND WHEREAS the said A. B. and C. D. have agreed to sell the said hereditaments to the said E. F., subject to the succession duty (if any) to become payable on the death of the said A. B. (*o*), at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, as to his estate for life in the hereditaments hereinafter described, and the said C. D., as beneficial owner, as to his estate in fee simple in remainder expectant on the said life estate in the said hereditaments, hereby respectively convey unto the said E. F. (*parcels*): TO HOLD the same unto and to the use of the said E. F., in fee simple, subject to the succession duty (if any) to become payable on the decease of the said A. B.

Agreement for sale.

Witnessing part.

Tenant for life and remainderman

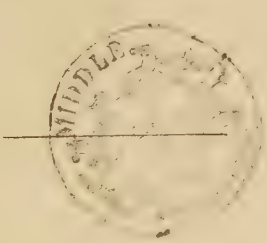
convey to purchaser in fee.

IN WITNESS, &c.

(*o*) See *supra*, p. 98, note. If, however, it is arranged that the duty shall be paid in advance, the words "subject to the succession duty," &c., will be omitted in the above recital and in the habendum, and the following recital will be inserted:—

Recital where succession duty paid in advance.

"AND WHEREAS the succession duty which will become payable for or in respect of the said hereditaments upon the decease of the said A. B., has before the execution of these presents been compounded for and satisfied in advance, under the provisions in that behalf contained in the Succession Duty Act, 1853."



No. LXXX.

CONVEYANCE OF REMAINDER IN FEE.

CONVEYANCE *of a* REMAINDER *in* FEE SIMPLE EXPECTANT *on a* LIFE ESTATE (*p*) *to a* PURCHASER *subject to the* SUCCESSION DUTY (*q*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite will of X. Y. devising the property to use of G. B. for life, with remainder to A. B. in fee*) :

Recite title of vendor.

Agreement for sale. AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments hereinafter described, subject to the life estate therein of the said G. B., at the price of £—— :

Witnessing part. NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner,

Vendor conveys (subject to life estate) to purchaser in fee. hereby conveys unto the said C. D., ALL, &c. (*parcels*) : TO HOLD the same unto and to the use of the said C. D., in fee simple, subject to the life estate therein of the said G. B., and to the succession duty (if any) which will become payable upon his decease for or in respect of the said hereditaments (*r*).

IN WITNESS, &c.

(*p*) The 31 Vict. c. 4, provides, that "no purchase made *bona fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate, shall, after the 1st of January, 1868, be opened or set aside merely on the ground of undervalue." The jurisdiction of the Court over unconscionable bargains is not affected by this Act. (Tyler *v.* Yates, L. R. 11 Eq. 265; The Earl of Aylesford *v.* Morris, L. R. 8 Ch. 484; Neville *v.* Snelling, 15 C. D. 679; Fry *v.* Lane, 40 C. D. 312.)

(*q*) See *supra*, pp. 98, 305, notes.

(*r*) An express covenant from the purchaser to indemnify the vendor against the succession duty is unnecessary, as it is clear that A. B., the remainderman, after aliening his remainder, is not liable to the duty. He is not the successor, although he would have been so but for the alienation. The successor is C. D., if living when the tenant for life dies, and the duty payable by him, although at the same rate, is a different sum to that which A. B. would have had to pay.

No. LXXXI.

CONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVE *of a deceased* VENDOR, *by virtue of the 4th section of the* CONVEYANCING ACT, 1881.

CONVEYANCE BY PERSONAL REPRESENTATIVE OF DECEASED VENDOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*personal representative of vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by a memorandum of agreement dated the —— day of ——, and made between X. Y., of the one part, and the said C. D., of the other part, the said X. Y. agreed to sell to the said C. D., and the said C. D. agreed to purchase of him the hereditaments hereinafter described at the price of £——, and thereupon the sum of £—— was paid by the said C. D. to the said X. Y. by way of deposit and in part payment of the said purchase-money, but no further part of the said purchase-money has been paid by the said C. D. up to the date of these presents: AND WHEREAS the said X. Y. died on the —— day of ——, 1884, intestate, and letters of administration of his personal estate and effects were granted on the —— day of —— to the said A. B. by or out of the principal Probate Registry of the High Court of Justice: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £—— so paid by way of deposit as aforesaid, and in consideration of the sum of £—— now paid by the said C. D. to the said A. B. as the personal representative of the said X. Y. (the payment and receipt in manner aforesaid of which said several sums of £—— and £——, making together the said purchase-money or sum of £——, the said A. B., as such personal representative as aforesaid, hereby acknowledges), the said A. B., as such personal representative as aforesaid, and by virtue of the Conveyancing and Law of Property Act, 1881, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

Parties.

Recite agreement for sale of freeholds.

Payment of deposit to vendor.

Death of vendor intestate.

Letters of administration to his effects.

Consideration sum paid by way of deposit.

Remainder of purchase-money paid to administrator.

Conveyance of parcels by legal personal representative of vendor to purchaser in fee.

IN WITNESS, &c.

No. LXXXII.

CONVEYANCE TO DEVISEE OF PURCHASER.

CONVEYANCE *of* FREEHOLDS *to* DEVISEE *of* PURCHASER *who* DIED BEFORE PAYMENT *of* PURCHASE MONEY *or* EXECUTION *of the* CONVEYANCE (*s*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D. (*devisee of the purchaser*), of the other part: WHEREAS by a memorandum of agreement dated the —— day of ——, and entered into between the said A. B. of the one part, and E. F., of, &c., of the other part, the said A. B. agreed to sell, and the said E. F. agreed to purchase the hereditaments hereinafter described at the price of £1,000, and it was thereby agreed that the sum of £200, part of the said purchase-money, should be paid on the signature of the agreement now in recital, and that the remainder of the said purchase-money should be paid and the conveyance of the said hereditaments to the said E. F. should be executed on the —— day of —— then next: AND WHEREAS the sum of £200 part of the said purchase-money was paid by the said E. F. to the said A. B. on the signature of the said agreement, as the said A. B. hereby admits: AND WHEREAS the said E. F. died on the —— day of ——, having made his will dated the —— day of ——, whereby he devised all his real estate to the said C. D., and the said will was duly proved on the —— day of ——, in the principal Probate Registry of the High Court of Justice: AND WHEREAS the said agreement still remains uncompleted, and the sum of £800, being the remainder of the said purchase-money, still remains unpaid: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £200 to the said A. B. paid by the said E. F. as hereinbefore is mentioned, and of the sum of £800 to the said A. B. now paid by the said C. D. (the receipt of which said sums of £200 and £800, making together the said purchase-

Agreement to sell to E. F.

Will of E. F. devising his real estate to C. D.

That agreement remains uncompleted and part of purchase-money remains unpaid.

In consideration of remainder of purchase-money paid by devisee,

(*s*) See 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34; and Dissertation on Mortgages, *infra*, p. 477.

money or sum of £1,000, the said A. B. hereby acknowledges), the said A. B. as beneficial owner hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

CONVEYANCE TO DEVISEE OF PURCHASER.

vendor conveys parcels to devisee of purchaser.

No. LXXXIII.

CONVEYANCE *of* FREEHOLDS *to* TRUSTEES *as* PURCHASERS *under a* POWER *contained in a* SETTLEMENT *to lay out* TRUST MONEY *in the* PURCHASE *of* LAND (*t*).

CONVEYANCE TO TRUSTEES PURCHASERS UNDER POWER TO LAY OUT TRUST MONEY IN LAND.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c., and E. F., of, &c. (*trustees*), of the second part, and G. H., of, &c., and L. his wife (*consenting parties to purchase*), of the third part (*Recite settlement on marriage of G. H. and L. his wife, then L. M., whereby certain trust funds were settled with a power for the trustees at the request of husband and wife to lay out any part thereof in the purchase of land* (*u*),—*agreement by A. B. to sell to C. D. and E. F.*): AND WHEREAS the said agreement for purchase was entered into by the said C. D. and E. F. at the request of the said G. H. and L. his wife, in exercise of the power of purchasing land contained in the said indenture of settlement as aforesaid, and the said purchase-money of £—— has been raised by the said C. D. and E. F. at the like request

Parties.

Recite settlement with power to purchase land.

Agreement for purchase.

That purchasers entered into agreement as trustees.

(*t*) When land is purchased by trustees under a power of laying out trust money in the purchase of land, the conveyance is sometimes made to the trustees as ordinary purchasers, without disclosing on the face of the instrument the fact of their being trustees. But in most cases, if not in all, it becomes necessary, sooner or later, to disclose the trust on the face of the title, and it seems, therefore, the better course to let the trust appear in the original purchase deed, as in the above Precedent, or in a deed indorsed thereon, as in Precedent No. LXXXV., *infra*.

The above opinion is not affected by the recent case of *In re* Harman and Uxbridge, &c. Rail. Co., 24 C. D. 720.

When land is purchased by trustees the trust should in general be disclosed.

(*u*) For a shorter form of recital, see Precedent No. LXXXVI., p. 312.

CONVEYANCE TO TRUSTEES PURCHASERS UNDER POWER TO LAY OUT TRUST MONEY IN LAND.

out of the trust funds comprised in the said indenture: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. on or before the execution of these presents out of the trust funds comprised in the said indenture of settlement at the request of the said G. H. and L. his wife (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F., in fee simple, UPON THE TRUSTS, and with and subject to the powers and provisions by and in the said indenture of settlement declared and contained concerning the hereditaments thereby authorized to be purchased with or out of the said trust funds, or such of them as are now subsisting and capable of taking effect.

Witnessing part.

Consideration.

Vendor conveys

to trustees upon trusts of settlement.

IN WITNESS, &c.

No. LXXXIV.

CONVEYANCE *to* PURCHASERS *as* JOINT TENANTS.

CONVEYANCE TO PURCHASERS AS JOINT TENANTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*purchasers*), of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. and E. F. out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F., in fee simple.

Parties.

Consideration.

Vendor conveys to purchasers as joint tenants.

IN WITNESS, &c.

No. LXXXV.

DECLARATION *of* TRUST *of* LANDS PURCHASED *under a* POWER *in a* SETTLEMENT *of* PERSONAL ESTATE (*by indorsement on last Precedent*).

DECLARATION OF TRUST OF LANDS PURCHASED UNDER POWER IN SETTLEMENT.

TO ALL TO WHOM THESE PRESENTS shall come, THE within named C. D. and E. F. and G. H., of, &c., and L. his wife, send greeting (*Recite settlement as in Precedent No. LXXXIII.*): AND WHEREAS the purchase of the hereditaments comprised in the within written indenture was made by the said C. D. and E. F. as the trustees of the hereinbefore recited indenture of settlement at the request in writing of the said G. H. and L. his wife, and in exercise of the power in that behalf contained in the last-mentioned indenture as aforesaid, and the within mentioned purchase-money of £—— was raised by the said C. D. and E. F. at the like request out of the trust funds comprised in the same indenture, as the said C. D., E. F., G. H. and L. his wife, do hereby respectively declare: NOW THESE PRESENTS WITNESSETH, that in consideration of the premises it is hereby declared and agreed that the said C. D. and E. F., their heirs and assigns, shall stand and be seised of and interested in all the hereditaments and premises comprised in and conveyed by the within written indenture, UPON THE TRUSTS, &c. (*as in Precedent No. LXXXIII.*).

Parties.

Recite that purchase was made by trustees under power in settlement to purchase lands.

Witnessing part.

Declaration of trust.

IN WITNESS, &c.

No. LXXXVI.

ASSIGNMENT *of a* LEASEHOLD HOUSE *to* TRUSTEES *purchasing under a* POWER *in a* MONEY SETTLEMENT, *the* HOUSE *having been in the first instance assigned to the* BENEFICIARY FOR LIFE *who assigns to the* TRUSTEES (*x*).

ASSIGNMENT OF LEASEHOLDS TO TRUSTEES UNDER POWER IN MONEY SETTLEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*assignor*), of the one part, and C. D., of, &c., and

Parties.

(*x*) A trustee purchasing leaseholds is bound, like any other purchaser, to covenant with the vendor to indemnify him against the rent and cove-

ASSIGNMENT OF LEASEHOLDS TO TRUSTEES UNDER POWER IN MONEY SETTLEMENT.

E. F., of, &c. (*trustees*), of the other part: WHEREAS by an indenture, &c. (*recite lease to G. H.*): AND WHEREAS by an indenture bearing even date with these presents, and made between the said G. H. of the one part, and the said A. B. of the other part, in consideration of the sum of £—— paid by the said A. B. as purchase-money, the said G. H. has assigned the said leasehold premises unto the said A. B. for the residue of the said term of —— years, subject to the said rent, covenants and conditions: AND WHEREAS the said C. D. and E. F. are the trustees of an indenture of settlement dated, &c., and made, &c., and as such trustees are authorized with the consent in writing of the said A. B. to invest any part of the trust money settled by the said indenture in the purchase of a messuage or dwelling-house, being freehold or copyhold of inheritance or leasehold held for a term whereof sixty years at least are unexpired at the time of the purchase, which messuage or dwelling-house is to be held by them upon the trusts declared concerning the same by the said indenture: AND WHEREAS the purchase expressed to be made by the said indenture bearing even date herewith has been made by the said A. B. on behalf of the said C. D. and E. F., and the purchase-money of £—— therein expressed to be paid by the said A. B. has been in fact paid by the said C. D. and E. F. out of the trust money settled by the said indenture of settlement; And the said A. B. has therefore agreed to make such assignment as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises the said A. B. as trustee hereby assigns unto the said C. D. and E. F. THE messuage or dwelling-house and premises comprised in the said indenture of lease of the —— day of ——, and thereby demised: TO HOLD the same unto the said C. D.

Recite lease, and assignment by vendor to assignor.

That trustees are authorized to lay out trust money in purchase of a house.

That purchase made by assignor was on behalf of trustees, and agreement for assignment.

Assignment to trustees.

nants in the lease. Whenever, therefore, a purchase is made at the request of the beneficiary for life, it will be prudent for the trustees to stipulate that the covenant shall be given by the beneficiary and not by themselves. In that case, the most convenient plan is for the beneficiary to enter into the contract with the vendor, and to take an assignment to himself in the first instance, which assignment will be in the form of Precedent No. X., and contain the usual covenant to indemnify the vendor. The beneficiary will then by a second deed (of which the above is a precedent) assign the property to the trustees, who will enter into no covenant. The result will be that the liability of the trustees will cease on their parting with the property.

Plan where trustees purchase leaseholds, as regards the liability to the rent and lessee's covenants.

and E. F. for all the residue now unexpired of the said term of —— years, subject to the rent reserved by the said indenture of lease and to the covenants and conditions therein contained, and on the lessee's part to be observed and performed: NEVERTHELESS, upon the trusts and with and subject to the powers and provisions applicable thereto under the said indenture of settlement as having been purchased out of the said trust moneys.

ASSIGNMENT OF LEASEHOLDS TO TRUSTEES UNDER POWER IN MONEY SETTLEMENT.

Upon trusts of settlement.

IN WITNESS, &c.

No. LXXXVII.

CONVEYANCE *of* FREEHOLDS *to the* USES *of a* SETTLEMENT *where the* PURCHASE *is made under the* SETTLED LAND ACTS *with* CAPITAL MONEY *arising from the sale of* PART *of the* SETTLED PROPERTY (*y*).

CONVEYANCE OF FREEHOLDS PURCHASED UNDER SETTLED LAND ACTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*tenant for life*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WHEREAS under or by virtue of an indenture of settlement dated, &c., and made, &c. [and an indenture dated, &c., and made, &c., being an appointment of new

Parties.

Recite settlement.

(*y*) By the Act of 1882 capital money arising under the Act is directed to be invested in (among other modes) the purchase of land in fee simple, or of copyhold land, or leasehold land held for sixty years or more unexpired at the time of purchase (sect. 21). The investment is to be made according to the direction of the tenant for life (sect. 22). Where under a settlement money is in the hands of trustees and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees may have independently of the Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under the Act (sect. 33). Sect. 42 provides that the trustees are not to be liable for adopting any contract for purchase made by the tenant for life, or bound to inquire into the propriety of the purchase, or answerable as regards the price, or for the investigation of the title. Having regard to the indemnity given to trustees by sect. 42, trustees will generally prefer to let the contract be entered into by the tenant for life under the Act, instead of taking on themselves the responsibility of purchasing under the powers of the settlement.

CONVEYANCE OF FREEHOLDS PURCHASED UNDER SETTLED LAND ACTS.

trustees], the capital messuage or mansion-house called ——, and divers other messuages, lands, and hereditaments situate in, &c. (hereinafter referred to as "the settled hereditaments") now stand settled to uses under which the said C. D. is tenant for life thereof within the meaning of the Settled Land Acts, 1882 to 1890, and the said E. F. and G. H. are the trustees of the settlement for the purposes of the said Acts: AND WHEREAS the said E. F. and G. H., as such trustees as aforesaid, have in their hands capital money liable to be laid out in the purchase of land to be made subject to the settlement (*z*): AND WHEREAS the said C. D. has agreed to purchase from the said A. B. the hereditaments hereinafter described for the sum of £——, and has directed the said E. F. and G. H. to apply part of the said capital money in the payment of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. and G. H. as such trustees as aforesaid on or before the execution of these presents by the direction of the said C. D. out of capital money in their hands as aforesaid (*the receipt, &c.*), the said A. B. as beneficial owner hereby conveys unto the said E. F. and G. H., ALL, &c. (*freehold parcels*): TO HOLD the same unto the said E. F. and G. H., in fee simple, To THE USES, upon the trusts and subject to the powers and provisions which under the said indenture of settlement [and the said indenture of the —— day of —— (*appointment of new trustees*)], or by reason of the exercise of any power of charging therein [*or* in the said indenture of settlement] contained are subsisting with respect to the settled hereditaments, but not so as to increase or multiply charges or powers of charging: AND the said A. B. hereby acknowledges the right of the said E. F. and G. H. to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

Agreement by tenant for life to purchase land, and direction to trustees to pay purchase-money.

Consideration.

Vendor conveys freeholds to uses of settlement.

Acknowledgment and undertaking as to documents.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*z*) These words are applicable whether the money is capital money arising under the Acts, or money produced by sales made under the powers of the settlement.

No. LXXXVIII.

ASSIGNMENT *of* LEASEHOLDS *to the* TRUSTEES *of a* SETTLEMENT *of* REAL ESTATE *where the* PURCHASE *is made under the* SETTLED LAND ACTS *with* CAPITAL MONEY *arising from the sale of* PART *of the* SETTLED PROPERTY.

ASSIGNMENT OF LEASEHOLDS PURCHASED UNDER SETTLED LAND ACTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*tenant for life*), of the second part, and E. F. of, &c., and G. H. of, &c., (*trustees*), of the third part: WHEREAS by an indenture dated, &c., and made, &c., ALL, &c. (*parcels*), were demised unto the said A. B. for the term of —— years at the rent, &c., and subject to the covenants and conditions, &c.: AND WHEREAS (*recitals that C. D. is tenant for life, and E. F. and G. H. trustees under settlement, and that trustees have capital money, &c., as in last precedent*): AND WHEREAS the said C. D. has agreed to purchase from the said A. B. the hereditaments comprised in the said indenture of lease for the residue of the said term, and subject to the said rent, covenants, and conditions, for the sum of £——, and has directed the said E. F. and G. H. to apply part of the said capital money in the payment of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. and G. H. as such trustees as aforesaid on or before the execution of these presents by the direction of the said C. D. out of capital money in their hands as aforesaid (*the receipt, &c.*), the said A. B. as beneficial owner hereby assigns unto the said E. F. and G. H., ALL the hereditaments and premises comprised in and demised by the hereinbefore-recited indenture of lease: TO HOLD the same unto the said E. F. and G. H. for the residue now unexpired of the said term of —— years created therein by the said indenture of lease, subject to the said rent of £—— thereby reserved and to the covenants and conditions therein contained, and on the lessee's part to be observed and performed: NEVERTHELESS UPON TRUSTS and subject to powers and provisions corresponding, as nearly as the law and circumstances will permit,

Parties.

Recite lease to vendor.

Agreement by tenant for life to purchase, and direction to trustees to pay purchase-money.

Consideration.

Vendor assigns leaseholds to trustees upon trusts corresponding with uses of freeholds comprised in settlement.

ASSIGNMENT OF LEASEHOLDS PURCHASED UNDER SETTLED LAND ACT.

with the uses, trusts, powers, and provisions which, under the said indenture of settlement [and the said indenture of the —— day of ——, 18— (*appointment of new trustees*)], are now subsisting with respect to the settled hereditaments, but so as not to increase or multiply charges or powers of charging: And so also that the beneficial interest in the said leasehold premises hereby assigned shall not vest absolutely in any person who by the said indenture of settlement is made by purchase tenant in tail male, and who shall die under the age of twenty-one years, but shall on the death of such person go as the settled hereditaments would go: And the said C. D. hereby covenants with the said A. B. that he the said C. D. and other the person or persons for the time being beneficially entitled to the premises hereby assigned, will, &c. (*to indemnify against rent and covenants, supra*, p. 225).

Covenant by tenant for life to indemnify against rent and covenants.

In witness, &c.

No. LXXXIX.

CONVEYANCE OF FREEHOLD REVERSION PURCHASED UNDER SETTLED LAND ACTS.

CONVEYANCE *to the* Uses *of a* Settlement *of the* Freehold Reversion *of* Leasehold Land, *part of the Settled Property, where the* Reversion *is* purchased *with* Capital Money *under the Settled Land Acts* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*tenant for life under settlement*), of the second part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the third part: Whereas

Recite lease.

by an indenture dated, &c., and made, &c., All, &c. (*parcels*), were demised unto the said C. D. from the —— day of ——, 18—, for the term of —— years at the yearly rent of £——, and subject to the covenants and conditions therein contained and on the lessee's part to be observed and performed: And

Settlement.

whereas by an indenture dated, &c., and made, &c., divers freehold lands and hereditaments situate in —— were settled to uses under which the said C. D. is beneficially entitled to the possession thereof during his life: And by the same indenture,

(*a*) See Act of 1882, s. 21 (vi).

CONVEYANCE OF FREEHOLD REVERSION PURCHASED UNDER SETTLED LAND ACTS.

the hereditaments comprised in the hereinbefore-recited indenture of lease were assigned by the said C. D. unto the said E. F. and G. H. for the residue of the said term of —— years, subject to the said rent, covenants, and conditions; nevertheless upon such trusts as would correspond, as nearly as the difference of tenure would permit, with the uses thereinbefore limited of and concerning the said freehold hereditaments: AND WHEREAS the said E. F. and G. H. are the trustees of the settlement made by the last hereinbefore-recited indenture for the purposes of the Settled Land Acts, 1882 to 1890, and as such trustees they have in their hands capital money liable to be laid out in the purchase of land to be made subject to the settlement: AND WHEREAS the said A. B. is seised or entitled of or to the reversion in fee simple of the hereditaments comprised in the said indenture of lease expectant on the term thereby granted: AND WHEREAS the said C. D., has agreed to purchase from the said A. B. the reversion in fee simple of the said hereditaments for the sum of £——, and has directed the said E. F. and G. H. to apply part of the said capital money in the payment of the said purchase money: NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the receipt, &c. (*as in last precedent*), the said A. B., as beneficial owner, hereby conveys and releases unto the said E. F. and G. H., ALL that the reversion in fee simple expectant on the term granted by the said indenture of lease of the —— day of ——, 18—, and all other (if any) the estate and interest of him the said A. B. in the hereditaments and premises comprised in the said indenture of lease: TO HOLD the same unto the said E. F. and G. H. in fee simple, to the intent that the term of —— years granted in the said hereditaments by the said indenture of lease may be extinguished in the freehold thereof, and that the said hereditaments shall henceforth go and remain as freehold, to the uses, upon the trusts, and with and subject to the powers and provisions which, under the said indenture of settlement, are now subsisting with respect to the freehold hereditaments thereby settled, but so as not to increase or multiply charges or powers of charging.

That trustees are trustees for purposes of Acts.

That vendor is owner of reversion.

Agreement for purchase.

Witnessing part.

Vendor conveys freehold reversion;

to uses of settlement.

IN WITNESS, &c.

No. XC.

CONVEYANCE WHERE PURCHASE MADE BY TRUSTEES ON BEHALF OF INFANT TENANT IN TAIL.

CONVEYANCE *by* TRUSTEES *for Sale to the* USES *of a Real Property* SETTLEMENT, *where the Purchase is made by the* TRUSTEES *of the* SETTLEMENT *on behalf of an* INFANT TENANT IN TAIL.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F. and G. H., of, &c. (*purchasers and trustees*), of the other part:

Recital of will devising property to vendors as trustees for sale.

WHEREAS X. Y., late of, &c., being seised in fee simple of the hereditaments hereinafter described, duly made his will, dated, &c., and thereby devised, &c. (*devise of real estate to A. B. and C. D. upon trust to sell—Death of testator, and probate of will*):

Settlement of real property.

AND WHEREAS under or by virtue of an indenture dated, &c., and made, &c., being a settlement of divers messuages, lands, and hereditaments situate at ——, C. D., an infant, is (or if he were of full age would be) tenant in tail in possession of the settled hereditaments, and the said E. F. and G. H. are the trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890.

That trustees of settlement have capital money, &c.

AND WHEREAS the said E. F. and G. H., as such trustees as aforesaid, have in their hands capital money liable to be laid out in the purchase of land to be made subject to the settlement:

Agreement for sale and purchase.

AND WHEREAS the said A. B. and C. D. have agreed to sell, and the said E. F. and G. H. have agreed to purchase, the hereditaments hereinafter described for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. D. as trustees hereby convey (*conveyance of freeholds to uses of settlement as in last precedent*).

IN WITNESS, &c.

No. XCI.

CONVEYANCE *to the* USES *of a* REAL PROPERTY SETTLEMENT, *where the* PURCHASE *is made with* MONEY *liable to be laid out in the* PURCHASE *of* LANDS, *and where there have been several* SUBSEQUENT *Deeds* SUPPLEMENTAL *to the* SETTLEMENT.

CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*tenant for life under the settlement*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WHEREAS under or by virtue of the several deeds mentioned in the first schedule hereto, the capital messuage or tenement called ——, and divers other hereditaments situate in —— (hereinafter called "the settled hereditaments"), now stand settled to uses under which the said C. D. is tenant for life thereof within the meaning of the Settled Land Acts, 1882 to 1890, and the said E. F. and G. H. are the trustees of the settlement for the purposes of the said Acts: AND WHEREAS, &c. (*other recitals as in Precedent No. LXXXVII.*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A.B., as beneficial owner, hereby conveys unto the said E. F. and G. H., ALL, &c. (*parcels*): TO HOLD the same unto the said E. F. and G. H., in fee simple, TO THE USES, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the said capital messuage, called ——, and the lands settled therewith, now stand limited under or by virtue of the deeds mentioned in the first schedule hereto: (*Add, if required, acknowledgment and undertaking by A. B. as to documents in second schedule.*)

Parties.

Recite that purchasers are trustees of settlement.

Witnessing part.

Vendor conveys to trustees.

To uses, &c., to which settled property stands limited under settlement and subsequent deeds.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

INDENTURE OF SETTLEMENT between, &c. (*parties*). 1st January, 1850.

INDENTURE between, &c. (*parties*), being an appointment of new trustees of the said indenture of settlement. 1st May, 1860.

CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT.

1st June, 1865. INDENTURE, &c. (*parties*), being a deed creating a jointure in favour of ——, and charging the settled estates with portions for the younger children of ——.

1st Aug. 1875. INDENTURE between, &c. (*parties*), and enrolled in the High Court of Justice, Chancery Division, as a disentailing deed.

2nd Aug. 1875. INDENTURE between, &c. (*parties*), being a re-settlement of the settled estates.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*To comprise documents.*)

No. XCII.

CONVEYANCE AND DECLARATION OF TRUST OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

CONVEYANCE *and* DECLARATION *of* TRUST *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *purchased with* MONEYS *arising from a* SALE *of* SETTLED PROPERTY (*b*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN E. F. of, &c., and G. H. of, &c. (*trustees*), of the one part, and C. D. of, &c. (*tenant for life*), of the other part. (*Recite that under settlement C. D. is tenant for life and E. F. and G. H. trustees as in Precedent No. LXXXVII.*) : AND WHEREAS parts of the hereditaments comprised in the said indenture of settlement have been sold from time to time under the powers of the said Acts or under a power of sale contained in the said indenture of settlement, and part of the moneys produced by such sales has been from time to time invested by the said E. F. and G. H., by the direction of the said C. D., in the purchase of the several freehold, copyhold, and leasehold hereditaments mentioned and

Sale of lands under power of sale and exchange.

Purchases made by trustees with sale moneys.

(*b*) It is sometimes convenient to have the conveyance made in the first instance to the trustees as if they were purchasers on their own account, and to have a conveyance by a separate instrument from the trustees of the settlement, according to the method adopted in this Precedent.

described in the schedule hereunder written, and the hereditaments so purchased have been conveyed, surrendered, and assigned to them as appears in the said schedule: AND WHEREAS the said E. F. and G. H. at the request of the said C. D., have agreed to make such conveyance and declaration of trust of the said purchased hereditaments respectively as are hereinafter respectively contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said E. F. and G. H., as trustees, hereby convey unto the said C. D. ALL the messuages, lands, tenements, and hereditaments mentioned and described in the first part of the schedule hereunder written: TO HOLD the same unto the said C. D. in fee simple, TO THE USES, &c. (*as in Precedent No. LXXXVII.*, p. 314). AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, it is hereby agreed and declared that the said E. F. and G. H., their heirs, executors, administrators, and assigns, respectively, shall henceforth stand seised and possessed of, and interested in, ALL the copyhold and leasehold messuages, lands, tenements, and hereditaments mentioned and described in the second and third parts of the schedule hereunder written: UPON SUCH TRUSTS, and with and subject to such powers and provisions as will correspond as nearly as the different nature and tenure of the premises will permit with the uses, trusts, powers, and provisions hereinbefore by reference declared and contained concerning the freehold hereditaments hereby conveyed, but so as not to increase or multiply charges or powers of charging, and so also that the said leasehold hereditaments shall not vest absolutely in any person being tenant in tail by purchase of the said freehold hereditaments, unless he or she shall attain the age of twenty-one years, but upon his or her death under that age shall go and devolve in the same manner as if the said leasehold hereditaments had been of freehold tenure, and had been hereinbefore conveyed as freehold accordingly.

IN WITNESS, &c.

CONVEYANCE AND DECLARATION OF TRUST OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

Agreement by trustees to convey to uses of settlement, &c.

First witnessing part.

Trustees convey.

Parcels in first part of schedule

to uses of settlement.

Second witnessing part.

Declaration of trust of copyholds and leaseholds in second and third parts of schedule.

THE SCHEDULE ABOVE REFERRED TO.

The 1st Part.

ALL THAT, &c. (*describe parcels*), which hereditaments and premises were conveyed unto and to the use of the said E. F. and

Freehold parcels.

CONVEYANCE AND DECLARATION OF TRUST OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

G. H., their heirs and assigns, by an indenture dated, &c., and made between (*parties*): ALSO ALL THAT, &c. (*describe other parcels*), which last-mentioned hereditaments and premises were conveyed, &c. (*as above*).

The 2nd Part.

Copyhold parcels.

ALL THAT, &c. (*parcels*), to which hereditaments and premises the said E. F. and G. H. were admitted tenants, upon the surrender of M. N., at a court holden in and for the manor of ——, on the —— day of ——: ALSO ALL THAT, &c. (*parcels*), to which last-mentioned hereditaments and premises, being held of the manor of —— the said E. F. and G. H. were out of court admitted tenants, on the —— day of ——, upon the surrender of O. P.

The 3rd Part.

Leasehold parcels.

ALL THAT, &c. (*parcels*), which premises were by an indenture dated, &c., and made, &c., assigned unto the said E. F. and G. H., their executors, administrators, and assigns, for the residue of a term of —— years, created by an indenture of lease, dated, &c., and made, &c.

No. XCIII.

CONVEYANCE TO MORTGAGEE OF LAND PURCHASED UNDER SETTLED LAND ACTS.

CONVEYANCE *on a* PURCHASE *under the powers of the* SETTLED LAND ACTS *where the* MONEY *with which the* PURCHASE *is made has arisen from the* SALE *of* LAND *which on the occasion of the sale was* RELEASED *from a* MORTGAGE DEBT *affecting the* FEE SIMPLE *and the* PURCHASED LAND *is made a* SUBSTITUTED SECURITY *for such* MORTGAGE DEBT (*c*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c.

(*c*) See Act of 1882, sect. 24, sub-sect. 4.

CONVEYANCE TO MORTGAGEE OF LAND PURCHASED UNDER SETTLED LAND ACTS.

(*tenant for life*), of the second part, E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part, and I. K., of, &c. (*mortgagee*), of the fourth part: WHEREAS by an indenture dated, &c., and made, &c., certain lands and hereditaments situate in —— were conveyed by the said —— unto and to the use of the said I. K. in fee simple subject to a proviso for the redemption thereof upon payment to him of the sum of £—— with interest thereon: AND WHEREAS by an indenture of settlement dated &c., and made &c., divers messuages, lands, and hereditaments situate in —— (including the equity of redemption of the said mortgaged hereditaments), were settled to uses under which the said C. D. is tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, and the said E. F. and G. H. are the trustees of the said settlement for the purposes of the said Acts: AND WHEREAS parts of the hereditaments comprised in the said indenture of mortgage and in the said indenture of settlement have been from time to time sold by the said C. D. under the powers of the Settled Land Acts, with the concurrence of the said I. K., and upon each such sale it was agreed that the moneys produced by the sale, and the hereditaments to be purchased therewith, should be substituted as a security for the said mortgage debt: AND WHEREAS the said C. D. has agreed to purchase from the said A. B. the hereditaments hereinafter described for the sum of £——, and has directed the said E. F. and G. H. to apply part of the moneys in their hands arising from the aforesaid sales in the payment of the said purchase-money: AND WHEREAS the said principal sum of £—— remains owing to the said I. K. upon the security of the said indenture of mortgage: AND WHEREAS it has been agreed that the said hereditaments shall be conveyed so as to be made subject to the said mortgage debt in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the receipt, &c., the said A. B. hereby conveys unto the said I. K., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said I. K. in fee simple subject to the like right or equity of redemption as is now subsisting under the said indenture of mortgage of the —— day of ——, 18—, in the hereditaments remaining subject thereto, and so that, upon payment of the said principal sum of £—— and the interest thereof, the said hereditaments hereby conveyed shall be conveyed to the uses, upon

Recital of mortgage.

Settlement of equity of redemption of mortgaged hereditaments

Sale of part of property.

Agreement for purchase,

and that purchased hereditaments shall be made subject to mortgage.

Witnessing part.

Vendor conveys to mortgagee subject to equity of redemption.

CONVEYANCE TO MORTGAGEE OF LAND PURCHASED UNDER SETTLED LAND ACTS.

the trusts, and subject to the powers and provisions subsisting under the said indenture of settlement with respect to the hereditaments thereby settled, but so as not to increase or multiply charges or powers of charging.

In witness, &c.

No. XCIV.

CONVEYANCE TO USES OF SETTLEMENT WHERE LIFE ESTATE HAS BEEN MORTGAGED.

CONVEYANCE *on a* Purchase *under the* Powers *of the* Settled Land Acts *where the* Life Estate *of the* Tenant for Life *in the settled land has been* Mortgaged *and his* Life Estate *in the* Purchased Land *is made subject to the* Mortgage.

Parties.

THIS INDENTURE made the —— day of ——, 18—, Between A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*tenant for life*), of the second part, I. K., of, &c. (*mortgagee of life estate*), of the third part, and E. F., of, &c., and G. H., of, &c., of the fourth part: Whereas by an indenture dated, &c., and made, &c., divers lands and hereditaments, situate in ——, were settled to uses, under which the said C. D. is tenant for life thereof within the meaning of the Settled Land Acts, 1882 to 1890, and the said E. F. and G. H. are the trustees of the settlement for the purposes of the said Acts (*Recite demise by C. D. to I. K. for ninety-nine years, if C. D. shall so long live, by way of mortgage*): And whereas parts of the settled hereditaments have been from time to time sold by the said C. D. under the powers of the Settled Land Acts with the consent of the said I. K., and upon the occasion of each such sale it was agreed between the said C. D. and I. K. that the moneys produced thereby and the hereditaments to be purchased therewith should be charged with the payment of the principal sum and interest secured by the said indenture of mortgage in like manner as the life estate of the said C. D. in the lands sold would have remained charged therewith if such sale had not been made: And whereas the said E. F. and G. H., by the direction of the said C. D. have

Recital of settlement.

Mortgage by tenant for life.

Sales of part of the settled lands with consent of mortgagee.

Agreement to purchase.

agreed to invest the sum of £——, being part of the moneys produced by the said sales, in the purchase from the said A. B. of the hereditaments hereinafter described: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. hereby conveys unto the said E. F. and G. H. (*parcels*): To HOLD the same unto and to the use of the said E. F. and G. H. in fee simple: To THE USES, upon the trusts, and subject to the powers and provisions now subsisting under the said indenture of settlement and the said indenture of mortgage with respect to the hereditaments comprised in both of those indentures.

CONVEYANCE TO USES OF SETTLEMENT WHERE LIFE ESTATE HAS BEEN MORTGAGED.

Witnessing part.

Conveyance to uses of settlement and mortgage.

IN WITNESS, &c.

No. XCV.

CONVEYANCE *by an* OWNER IN FEE SIMPLE *to a* PURCHASER, *it being part of the* ARRANGEMENT *that the* VENDOR *shall have a* LEASE *of the property for a* TERM DETERMINABLE *with his* LIFE *at a* NOMINAL RENT (*d*).

CONVEYANCE WHERE VENDOR IS TO HAVE A LEASE FOR LIFE.

THIS INDENTURE made the —— day of ——, 18—, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS it has been agreed between the parties hereto that the said A. B. shall sell and convey the hereditaments hereinafter described to the said C. D., and that, by way of consideration for the said sale and conveyance, the said C. D. shall pay to the said A. B. the sum of £—— and shall grant to him a lease of the said hereditaments for the

Parties.

Recite arrangement.

(*d*) The intention of the parties is that the vendor shall, practically, reserve a life interest, and that the purchaser shall have a reversionary estate only. But if the conveyance is made to the use of the vendor for life with remainder to the use of the purchaser in fee simple, it is apprehended that there would be a settlement within the meaning of the Settled Land Act, 1882, and the vendor as tenant for life would be able to sell the fee simple without the concurrence of the purchaser as remainderman. This consequence can be avoided by adopting the plan in the above precedent, viz., of conveying the property to the purchaser in fee simple, he by a deed of even date demising it to the vendor for a term determinable with his life at a nominal rent.

CONVEYANCE WHERE VENDOR IS TO HAVE A LEASE FOR LIFE.

term of ninety-nine years, if he shall so long live, at the yearly rent of £1: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c. (*the receipt, &c.*), and in consideration also of the lease hereinafter mentioned, the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple: PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED that the said C. D. shall, by an indenture already prepared and engrossed, demise the said hereditaments to the said A. B. for a term of ninety-nine years if he, the said A. B., shall so long live, at the yearly rent of £1, and subject to the lessee's covenants in the said indenture contained.

Conveyance to purchaser in fee.

Proviso that purchaser shall grant lease to vendor for 99 years if he shall so long live.

IN WITNESS, &c.

No. XCVI.

LEASE FROM PURCHASER TO VENDOR FOR 99 YEARS DETERMINABLE WITH HIS LIFE.

LEASE *from* PURCHASER *to* VENDOR *in pursuance of last* PRECEDENT.

THIS INDENTURE, made the —— day of —— 18—, BETWEEN C. D. of, &c. (*purchaser*), of the one part, and A. B. of, &c. (*vendor*), of the other part, WITNESSETH that in pursuance of an agreement in this behalf contained in an indenture dated the day before the day of the date of these presents and made between the said A. B. of the one part, and the said C. D. of the other part, and in consideration of the conveyance thereby made and of the rent and lessee's covenants hereinafter reserved and contained, the said C. D. hereby demises unto the said A. B., ALL, &c. (*parcels*): TO HOLD the same unto the said A. B. from the date of these presents, for the term of 99 years thence next ensuing, if he, the said A. B., shall so long live: YIELDING AND PAYING therefor the yearly rent of £1, on the —— day of —— in every year: AND THE SAID A. B. hereby covenants with the said C. D., that the said A. B. will

Covenants by vendor to keep in repair buildings

LEASE FROM PURCHASER TO VENDOR FOR 99 YEARS DETERMINABLE WITH HIS LIFE.

at his own expense during this lease keep in good and complete repair and condition the capital messuage called ——, and all other the buildings and erections for the time being upon the said premises hereby demised, and also all the gates, stiles, and fences upon the said premises; And also will at the like expense during this lease adequately insure and keep insured the said capital messuage, and all other the buildings and erections for the time being standing upon the said premises, against loss or damage by fire, in some office or offices in London or Westminster, and also will, when required, produce to the said C. D., his heirs or assigns, or his or their agent, the policies of such insurance, and the receipts for the current year's premiums paid thereon: and also will forthwith, on every occasion on which moneys shall be received by virtue of any such insurance, lay out and expend the same (after deducting necessary expenses) in properly repairing, rebuilding, or reinstating the buildings which shall have been destroyed or damaged: And also that the said A. B. will not during this lease fell or cut down any timber or timber-like trees standing or growing on the said premises hereby conveyed, unless the same may be required for renewing or repairing the park palings, and then only such as may be properly and fairly felled or cut down without detracting from the enjoyment of the said mansion-house as a place of residence, or from the beauty of the said premises hereby demised, or unless such timber or trees shall be of such age and in such state as that the same considered as ornamental timber only may properly require to be felled or cut down with a view to the enjoyment of the said mansion-house as a place of residence or to the beauty of the said premises: Provided always, that the said A. B., or his assigns, shall give to the said C. D., his heirs or assigns, at least one calendar month's previous notice in writing of the intention of the said A. B., or his assigns, to cut any timber or timber-like trees under the provisions hereinbefore contained, and that the trees intended to be cut or felled shall be marked, and shall be shown when required to some person appointed for the purpose by the said C. D., his heirs or assigns; and in case such person shall, on behalf of the said C. D., his heirs or assigns, object to the felling or cutting of any trees, as being improper and coming within the restrictions aforesaid, the same shall not be felled or

during his life and keep insured against fire,

not to cut timber except such as ought to be cut.

Vendor to give notice before cutting timber.

LEASE FROM PURCHASER TO VENDOR FOR 99 YEARS DETERMINABLE WITH HIS LIFE.

Arbitration clause.

cut unless and until it shall have been decided by arbitration, as hereinafter provided, that the same may be felled or cut: PROVIDED ALSO, and it is hereby agreed and declared, that if any question or difference shall arise between the parties hereto or any persons deriving title under them respectively, as to whether any timber or timber-like trees are such as may be properly felled or cut down having regard to the covenant and restrictions aforesaid, such question or difference shall be referred to a single arbitrator [or to two arbitrators, one to be appointed by each party] under and subject to the provisions of the Arbitration Act, 1889.

IN WITNESS, &c.

No. XCVII.

CONVEYANCE TO RAILWAY COMPANY.

CONVEYANCE *by an* OWNER *in* FEE *to a* RAILWAY COMPANY (*e*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and The —— Railway

Power to purchase by agreement.

Parties under disability able to sell.

(*e*) By the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), power is given to the promoters of undertakings to purchase lands of the owners by agreement. (Sect. 6.)

Parties having only partial interests, or being under disability, are empowered to sell to the company (sect. 7), and the purchase-money or compensation in such cases is to be ascertained either by the verdict of a jury, or arbitration, or by valuation of two surveyors, one to be nominated by the promoters, and the other by the other party, each of such surveyors annexing to the valuation a declaration in writing as to the correctness thereof (sect. 9), and must be paid into the Bank of England if it amounts to £200 (sect. 69); and if it exceeds £20, but does not amount to £200, then into the bank, or to trustees to be nominated in writing by the parties entitled to the rents and profits of the lands in respect of which the purchase-money is payable (sect. 71), and be applied as therein directed. (Sects. 69, 73, 74.) Upon the deposit of the purchase-money or compensation in the bank, all such persons are required to convey the purchased lands to the company, and in default thereof the company is empowered to execute a deed poll, which is to have the effect of a conveyance of all the estate in such lands capable of being sold to the company. (Sect. 75.)

Costs.

The company bears the costs of all conveyances, as well on the part of

Company (hereinafter called "the Company") of the other part: WHEREAS by the —— Railway Act, 18—, the company are

CONVEYANCE TO RAILWAY COMPANY.

the vendor as of the purchaser, and of the deducing and evidencing the title to the lands, and also of all abstracts and attested copies which they may require. (Sect. 82.)

Limit of time for compulsory purchase.

The powers of the promoters for the compulsory purchase of lands for the purposes of the special Act cannot be exercised after the expiration of the prescribed period; and if no period is prescribed, not after the expiration of three years from the passing of the special Act. (Sect. 123.)

Conveyance of copyholds.

All conveyances of copyhold lands under the Lands Clauses Consolidation Act must be entered on the rolls of the manor, and on the payment of the steward's fees he is required to make such enrolment; and it is declared, that within three months after the enrolment of such conveyance, or within one month after the lands shall be entered on by the company, the promoters shall procure the copyhold lands to be enfranchised, and shall apply to the lord of the manor for this purpose, and shall pay a compensation in respect thereof, as provided by the Act. (Sects. 95, 96.)

Enfranchisement of copyholds.

The 97th section provides for the enfranchisement by deed poll by the lord of the manor, or, in default thereof by him, by the promoters of the copyholds to be entered upon and taken upon payment or tender of the compensation, or on deposit thereof in the bank, as provided in the Act.

Clauses as to copyholds, lands in mortgage, and under lease.

The 98th section provides for the apportionment of copyhold rents when part only of the land subject to the rent is required. The 108th and six following sections relate to lands in mortgage; and the 119th and three following sections provide for the apportionment of the rents where part only of lands under lease is taken, and for the compensation to be made to tenants.

Sale of superfluous lands after the expiration of the time.

As to superfluous lands, or, in other words, lands not required for the purposes of the undertaking, the company is required within the prescribed period, or, if no period be prescribed, within ten years after the expiration of the time limited by the special Act for the completion of the works, to sell such superfluous lands, giving, notwithstanding, a right of pre-emption (unless the lands be situate within a town, or be lands built upon or used for building purposes) first to the person then entitled to the lands (if any) from which the same were originally severed, if such person can be found, or if he refuses to purchase or cannot be found, then to the person or persons whose lands may immediately join the lands proposed to be sold. The persons to whom the offer of sale is made, if desirous of availing themselves of this right of pre-emption, are *required* to signify such their desire within six weeks after the offer of sale is made to them respectively. (Sects. 127, 128, 129.)

The question whether land is to be deemed superfluous within this section must be determined at the expiration of the ten years. If it is not superfluous then, but becomes so afterwards, the section does not apply. (South Western Railway *v.* Marg, L. R. 7 H. L. 283.) Land is superfluous within the section if at the end of the ten years it is not then wanted for the purpose of the railway, and there are no purposes in connection with the railway for which it can reasonably be expected that the land will be wanted afterwards. (Hooper *v.* Bourne, 5 App. Ca. 1; Betts *v.* Great Eastern Rail. Co., 3 Ex. D. 182. See, also, Bird *v.* Eggleton, 29 C. D. 1012.)

The sale of superfluous land must be absolute without any reservation of interest to the company. (London and South Western Railway Company *v.* Gomm, 20 C. D. 562.)

Where there are several properties adjoining to the land which is super-

CONVEYANCE TO RAILWAY COMPANY.

empowered to take and purchase the pieces of land and hereditaments intended to be hereby conveyed for the purposes of the railway and works thereby authorized: AND WHEREAS the said A. B. has agreed to sell and the company have agreed to purchase the said pieces of land and hereditaments [together with the mines and minerals under the same] for the sum of £——, which sum is to include (*f*) compensation for all damage to be sustained by the said A. B. by reason of the severing of such lands from other lands of the said A. B., or otherwise injuriously affecting such other lands by the execution of the powers of the said Act, and also for all works which might otherwise be required to be made and maintained for the accommodation of such other lands [save and except the works mentioned in the second schedule hereto]: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the company on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys to the company: ALL those two pieces or parcels of land situate in the parish of ——, in the county of ——, containing respectively —— and ——, and being respectively parts of two closes of meadow ground called respectively —— and ——, and distinguished in the plan and books of reference of the said railway, deposited in the office of the clerk of the peace for the said county of ——, so far as relates to the said parish of ——, by the Nos. —— and ——, And which pieces of land intended to be hereby conveyed are delineated in the plan drawn in the margin of these presents, and are therein coloured red [together with the mines and minerals in and under the said lands] (*g*): To HOLD the same to the company, their successors and assigns for ever, according

Agreement by company to purchase.

Witnessing part.

Vendor conveys parcels

to railway company.

fluous, it should be divided among the several owners in proportion to the frontage of each. (Moody *v.* Corbett, L. R. 1 Q. B. 510.) As to what are lands situate within a town, see Lord Carrington *v.* Wycombe Rail. Co., L. R. 3 Ch. 377. The surface over a tunnel is not superfluous land within the section. (*In re* Metropolitan Rail. Co. and Cosh, 13 C. D. 607.)

A railway company may sell its superfluous lands, subject to restrictive covenants as to user. (*In re* Higgins' Contract, 21 C. D. 95.)

(*f*) If a further sum is to be paid for severance, and is assessed separately, there should be a separate receipt for it; and it will be unnecessary to refer to it in the conveyance.

(*g*) If the mines are included in the purchase, it is necessary to mention them, otherwise they will not pass. (See 8 Vict. c. 20, s. 77.)

to the true intent and meaning of the —— Railway Act, 18—: And the said A. B. hereby acknowledges the right of the said company to production of the documents of title mentioned in the first schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof: [And the Company hereby covenants with the said A. B. to make and for ever hereafter maintain, for the accommodation of the adjoining lands of the said A. B., the communications and works mentioned in the second schedule hereto].

CONVEYANCE TO RAILWAY COMPANY.

Vendor gives acknowledgment and undertaking.

Covenant by company to make and maintain accommodation works.

In witness, &c.

The First Schedule above referred to (*to comprise the deeds*).

The Second Schedule above referred to (*specifying the accommodation works*).

No. XCVIII.

CONVEYANCE *by* Tenant *for* Life *to a* Railway Company.

CONVEYANCE BY TENANT FOR LIFE TO RAILWAY COMPANY.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and the —— Railway Company (hereinafter called "the company"), of the other part: Whereas (*Recite instrument under which A. B. is tenant for life*): And whereas (*Recite that company are by Act empowered to take land, supra. p.* 329): And whereas the said A. B. as such tenant for life as aforesaid has agreed to sell and the company have agreed to purchase the said pieces of land and hereditaments for the sum of £——, being the sum which by the

Parties.

Agreement for purchase at a sum determined by valuation of surveyors.

CONVEYANCE BY TENANT FOR LIFE TO RAILWAY COMPANY.

valuation in writing dated the —— day of ——, of C. D., of, &c., and E. F., of, &c., two able practical surveyors nominated by the said A. B. and by the company respectively, has been determined to be the purchase-money or compensation to be paid for the lands or hereditaments and for any permanent damage or injury to adjoining or other lands of which the said A. B. is tenant for life as aforesaid, and which C. D. and E. F. have annexed to their valuation a declaration in writing subscribed by them of the correctness thereof: AND WHEREAS the company, on the —— day of —— last, paid the sum of £——, being such purchase-money and compensation as aforesaid, into Court to the credit of "Ex parte The —— Railway Company in the matter of the —— Railway Act, 18—," as appears by the receipt dated the —— day of ——, 18—, of one of the cashiers of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement for sale, and in consideration of the sum of £—— paid by the company as aforesaid, the said A. B. as beneficial owner, in exercise of the power for this purpose vested in him by the said Act or otherwise, doth hereby convey unto the company ALL, &c. (*parcels*): TO HOLD the same unto the company, their successors and assigns for ever, according to the true intent and meaning of the said Act (*Proviso qualifying statutory covenants for title, supra, p.* 277): AND the said A. B. hereby acknowledges the right of the company to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

Payment into Court of purchase-money.

Witnessing part.

Consideration.

Vendor conveys parcels to railway company.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XCIX.

CONVEYANCE *by a* TENANT FOR LIFE *to a* RAILWAY COMPANY, *under the* POWERS *of the* SETTLED LAND ACTS, *of* LANDS, INCLUDING *the* MINES *thereunder* (*g*).

CONVEYANCE TO RAILWAY COMPANY UNDER POWERS OF SETTLED LAND ACTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, and C. D., of, &c. and E. F., of, &c. (*trustees*), of the second part, and The —— Railway Company incorporated by the —— Railway Act, 18—, (hereinafter called "the company"), of the third part: WHEREAS, by an indenture dated the —— day of ——, 1883, and made, &c., the hereditaments therein described, of which the lands intended to be hereby conveyed are part, were conveyed to the use of the said A. B. for his life, and after his decease to the uses therein declared concerning the same, and by the indenture now in recital the said C. D. and E. F. were appointed trustees of the settlement for the purposes of the Settled Land Act, 1882: AND WHEREAS the company require, and are authorized by the —— Railway Act, 18—, to take, for the purposes of their undertaking, the lands intended to be hereby conveyed, and the said company have accordingly agreed with the said A. B. to purchase the said lands in consideration of the sum of £——, which is to include compensation for the damage to be sustained by him and his successors in title, owners of the said lands, by reason of the severing of the said lands from the remainder of the estate to which the same belong, or otherwise injuriously affecting such lands by the execution of the powers of the said Act: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said C. D. and E. F. as such trustees as aforesaid paid by the company on or before the execution of these presents by the direction of the said A. B. (the receipt whereof the said C. D. and E. F. hereby acknowledge), the

Parties.

Recite indenture of settlement dated 1883, whereby freeholds were limited to A. B. for life,

and that C. D. and F. F. were thereby appointed trustees for purposes of Act.

Agreement by railway company to purchase land.

Consideration paid to trustees.

(*g*) On a sale to a railway company by a tenant for life, or by other limited owners who have the powers of a tenant for life under the Settled Land Act, 1882, the sale will generally be carried into effect under the power for this purpose conferred by that Act, and not under the power conferred by the Lands Clauses Act, as by selling under the former Act the valuation which would otherwise be necessary can be dispensed with, and the purchase-money can be paid directly to the trustees of the settlement, instead of being obliged to be paid into the bank.

As to sales by tenant for life to railway company under Settled Land Act.

CONVEYANCE TO RAILWAY COMPANY UNDER POWERS OF SETTLED LAND ACTS.

said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the company ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the company, their successors and assigns for ever, according to the true intent and meaning of the said —— Railway Act (*proviso qualifying statutory covenants, supra*, p. 277): And the said A. B. hereby acknowledges the right of the company to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

Tenant for life, pursuant to power in Settled Land Act, conveys lands to company.

Acknowledgment and undertaking for safe custody.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. C.

CONVEYANCE OF COPYHOLDS TO RAILWAY COMPANY.

CONVEYANCE *by an* OWNER *in* FEE *of* COPYHOLDS *to a* RAILWAY COMPANY (*f*).

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., as beneficial owner, of, &c. (*vendor*), in consideration of the sum of £—— as purchase-money to me paid by the —— Railway Company, do hereby, in execution of the powers for this purpose given me by the —— Railway Act, and the public Acts incorporated therewith, convey to the said company, their successors and assigns, ALL, &c. (*here describe the parcels*): TO HOLD the premises to the said company their successors and assigns for ever, according to the true intent and meaning of the said Act.

Consideration.

Conveyance by owner of copyholds.

To hold to company.

IN WITNESS, &c.

(*f*) See p. 329, note.

No. CI.

CONVEYANCE *by a* RAILWAY COMPANY *of* SUPERFLUOUS LANDS *to a* PURCHASER (*h*).

CONVEYANCE BY RAILWAY COMPANY OF SUPERFLUOUS LANDS.

THIS INDENTURE, made the —— day of ——, BETWEEN the —— Railway Company, incorporated by the —— Railway Act, 18—, (hereinafter called "the company"), of the one part, and A. B. of, &c. (*purchaser*), of the other part: WHEREAS, under the powers of the said —— Railway Act, 18— (in which Act the Lands Clauses Consolidation Act, 1845, is incorporated), the Company some time since purchased from X. Y. of, &c., certain pieces of land and hereditaments, of which the land and hereditaments intended to be hereby granted form part, and the same land and hereditaments were accordingly conveyed to the Company by an indenture dated the —— day of ——, and made between the said X. Y. of the one part, and the Company of the other part: AND WHEREAS the —— day of ——, 18—, was the time limited by the said —— Railway Act, 18—, for the completion of the works thereby authorized: AND WHEREAS the land and hereditaments intended to be hereby granted are not required for the purposes of the said Railway Act: AND WHEREAS the said X. Y. died on the —— day of —— intestate, leaving C. D. of, &c., and E. F. of, &c., his co-heiresses at law, and the said C. D. and E. F. are the persons now entitled to the lands from which the said lands and hereditaments intended to be hereby granted were severed, and are also owners of the lands immediately adjoining to the last-mentioned lands and hereditaments: AND WHEREAS N. O. of, &c., a person not interested in the matter in question, has made a declaration in writing, dated the —— day of ——, before P. Q. of, &c., a justice of the peace for the county of ——, not interested in the said matter, and has thereby declared that an offer to sell the land and hereditaments intended to be hereby granted was duly made by the Company to the said C. D. and E. F. on the —— day of ——, and that such offer was not accepted by the said C. D. and E. F., or either of them, within

Parties.

Recite purchase by and conveyance to the railway company.

Day fixed by the Railway Act for completion of works.

That land is not required by railway company.

Title of C. D. and E. F. to adjoining lands.

Declaration of offer to sell to C. D. and E. F.

(*h*) See *supra*, p. 329, note.

CONVEYANCE BY RAILWAY COMPANY OF SUPERFLUOUS LANDS.

six weeks of making the same: And whereas since the date of the said declaration the Company have agreed to sell to the said A. B. the land and hereditaments intended to be hereby granted, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the Company paid by the said A. B. (*the receipt, &c.*), the Company hereby grants (*i*) unto the said A. B., All, &c. (*parcels*): To hold the same unto and to the use of the said A. B. in fee simple.

Agreement for sale to A. B.

Witnessing part.

Consideration.

Railway company convey to purchaser.

In witness whereof the Company have caused their common seal to be hereunto affixed, and the said A. B. has hereunto set his hand and seal the day and year first above written.

The common seal of the —— Railway Company was affixed to the within-written indenture in the presence of us:

E. F. } Directors.
G. H. }
I. K., Secretary.

No. CII.

CONVEYANCE TO SCHOOL BOARD.

CONVEYANCE *by a* Tenant for Life *of a* Piece of Land *to a* School Board (*k*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and the School Board for ——

When "grant" operates as express covenants.

(*i*) By the Lands Clauses Consolidation Act, 1845, s. 132, it is provided, that in conveyances of land by the promoters of the undertaking, the word "grant" shall operate as express covenants for title and for further assurance.

School boards empowered to purchase and take on lease.

(*k*) School Boards are empowered by the 19th section of the Elementary Education Act, 1870, to provide school houses, and improve, enlarge, and fit up any school house provided by them, and to purchase and take on lease any land and any right over land.

The conveyance does not require enrolment. (See 51 Vict. c. 42, s. 6.)

It is supposed in this precedent that the sale is made by the tenant for life under the Lands Clauses Act. If the sale is made under the Settled Land Acts, Precedent No. XCIX. can be easily adapted to a sale to a School Board.

CONVEYANCE TO SCHOOL BOARD.

of the third part: WHEREAS under the will of X. Y. of, &c., the said A. B. is tenant for life of the piece of land intended to be hereby conveyed with remainders over: AND WHEREAS the said School Board, being desirous of acquiring the said piece of land as a site for a school, have, under the powers in that behalf vested in them by the Elementary Education Act, 1870, agreed with the said A. B. for the purchase thereof for the sum of £100, which sum has been determined to be the value thereof by the valuation in writing of G. H. of, &c., and I. K. of, &c., two able practical surveyors, nominated by the said A. B. and the said School Board respectively, and which said G. H. and I. K. have annexed to their valuation a declaration in writing subscribed by them of the correctness thereof: AND WHEREAS by a writing dated the —— day of ——, under the hand of the said A. B., the said C. D. and E. F. have been nominated trustees to receive the purchase-money, and such nomination is approved of by the said School Board, as the said School Board do hereby declare: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £100 to the said C. D. and E. F. as such trustees as aforesaid paid by the said School Board, on or before the execution of these presents (the receipt whereof the said C. D. and E. F. hereby acknowledge) (*l*), the said A. B. as beneficial owner, hereby conveys unto the said School Board, ALL THAT, &c. (*parcels*): TO HOLD the same unto the said School Board their successors and assigns for ever, according to the true intent and meaning of the said Act. (*Proviso qualifying statutory covenants, supra*, p. 277.—*Acknowledgment as to title deeds, supra*, p. 217.)

Recite that A. B. is tenant for life.

Agreement by school board to purchase.

Appointment of trustees to receive the purchase-money.

Witnessing part.

Vendor conveys

parcels

to school board.

IN WITNESS, &c.

(*l*) If the purchase-money amounts to £200, this sum must be paid into Court, unless the sale is made by the tenant for life under the powers of the Settled Land Act, 1882. (See *supra*, p. 328, note.)

No. CIII.

CONVEYANCE BY VICAR OF GLEBE LAND UNDER GLEBE LANDS ACT.

CONVEYANCE *by* VICAR *of part of* GLEBE LAND *to a* PURCHASER *under the* GLEBE LANDS ACT, 1888 (*m*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN The Reverend A. B., the vicar of the parish church of S. in the county of ——, of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS in pursuance of the provisions of the Glebe Lands Act, 1888, the said A. B., as the vicar of S., lately agreed with the said C. D. for the sale to him of the lands hereinafter described, being part of the glebe lands of the vicarage of S., for the sum of £——, subject to the approval of the Board of Agriculture, to which Board the powers of the Land Commissioners under the said Act were transferred by the Board of Agriculture Act, 1889 : AND WHEREAS by an instrument in writing under their official seal, dated the —— day of ——, 18—, the Board of Agriculture, in exercise of the power given to them by the said Glebe Lands Act, 1888, approved of the sale by the said vicar to the said C. D. of the land intended to be hereby conveyed, at a sum not being less than £—— (*insert here such conditions* (*if any*) *as are prescribed by the order*) : NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid by the said C. D. into the Bank of England to the account of the said Board of Agriculture (the receipt whereof is acknowledged by a memorandum in writing under the official seal of the said Board, dated the —— day of ——, 18—) : THE SAID A. B., as such vicar as aforesaid, in exercise of the power for

Recital of sale by vicar subject to approval of Board of Agriculture.

Approval by Board of Agriculture.

Witnessing part.

In consideration of purchase-money paid into Bank of England to account of Board,

Vicar conveys to purchaser in fee.

(*m*) Rules have been made under sect. 9, and a copy of which may be had by application to the Board of Agriculture (now substituted for the Land Commissioners). The rules prescribe the notices to be given by the incumbent before he may apply to the Board for permission to sell. These notices are to the bishop, the patron, mortgagees (if any) of the land, the parishioners generally, and the sanitary authority. If no objection is made, the Board requires a valuation by a competent surveyor. The Board may then approve of the sale by an order made in a prescribed form. The money has to be paid into the Bank of England to the account of the Board, and the application of the proceeds is directed by sect. 4 of the Act.

this purpose given to him by the Glebe Lands Act, 1888, and of all other powers (if any) him hereunto enabling, doth hereby convey unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple: AND the said A. B. hereby covenants with the said C. D., that he the said A. B. has not done or knowingly suffered or been party or privy to any act or thing whereby he is prevented from conveying the said lands in manner aforesaid.

CONVEYANCE BY VICAR OF GLEBE LAND UNDER GLEBE LANDS ACT.

Covenant by vicar that he has done no act to prevent his conveying.

IN WITNESS, &c.

No. CIV.

CONVEYANCE *of* LAND *for* BUILDING *in* CONSIDERATION *of a* PERPETUAL RENT-CHARGE (*n*). COVENANTS *by* GRANTEE *to* BUILD *thereon, and to* INSURE *and* KEEP *in* REPAIR BUILDINGS *and other* COVENANTS *in* CONNECTION *with the* BUILDINGS (*o*).

BUILDING GRANT.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration of the rent hereinafter limited, and of the covenants of the said C. D. hereinafter contained, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL THAT piece of land situate, &c., and containing, &c., being part of an estate of the said A. B. known as the —— estate, which has been laid out for building purposes, and which piece of land intended to be hereby conveyed is delineated in the plan drawn in the margin of these presents and is therein coloured pink, the remainder

Parties.

Grantor conveys parcels

(*n*) The stamp on this deed will be £1. (*Supra*, p. 205.) The deed should be executed in duplicate.

(*o*) Grants at a fee farm rent, as they are usually called, are common in Manchester, Bristol, and Bath, and a few other places, and some Precedents of them are therefore inserted. But as will appear from the following notes, the position of the grantor, as regards his remedies for the performance of the grantee's covenants, is decidedly inferior to that of a lessor upon a lease for a long term—say, 999 years.

Position of a grantor of land at a fee farm rent inferior to that of lessor.

BUILDING GRANT.

of the estate being also shown on the said plan and therein coloured yellow: TOGETHER with the messuage or dwelling-house now in course of erection on the said piece of land: TO HOLD the same unto the said C. D., in fee simple, TO THE USE that the said A. B. shall have, in fee simple, a perpetual yearly rent-charge of £10, issuing out of the said land, and payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on the —— day of —— next, AND SUBJECT to the said rent-charge, and to the statutory powers and remedies for recovering and compelling payment thereof (*p*), TO THE USE of the said C. D. in fee simple: AND THE SAID C. D. hereby covenants with the said A. B., his heirs and assigns in manner following (that is to say), THAT the said C. D., his heirs or assigns, will at all times hereafter pay the said yearly rent-charge at the times hereinbefore appointed for payment thereof (*q*); AND also will within twelve calendar months next after the date of these presents, at his or their expense, under the inspection and to the satisfaction of the architect for the time being of the said A. B., his heirs or assigns, complete so as to be fit for habitation the messuage or dwelling-house now in course of erection upon the said piece of land, the said messuage or dwelling-house to be, when completed, of the value of £—— at least, and also will, at the request of the said A. B., his heirs or assigns, produce to him or them full and satisfactory vouchers of expenditure to the value aforesaid: AND ALSO will at all times hereafter keep the said messuage or dwelling-house, and all boundary walls and drains belonging thereto, in good and tenantable repair and condition, and will permit the said A. B., his heirs or assigns,

to use that grantor may receive perpetual rent-charge,

and subject thereto to use of grantee in fee.

Covenants by grantee to pay rent.

To complete a dwelling-house within twelve calendar months,

to produce vouchers of expenditure,

to keep in repair,

(*p*) See sect. 44 of the Conveyancing Act, 1881. It is doubtful whether the power conferred by sub-sect. 4 could be exercised, having regard to the rule against perpetuities.

(*q*) It is doubtful whether the burden of a covenant to pay rent runs with the land, but independently of covenant, the owner of a rent-charge which is in arrear may bring an action of debt to recover the arrears against the terre-tenant, *i. e.*, the owner of the land for the time being. (Thomas *v.* Sylvester, L. R. 8 Q. B. 368.) But if the owner of the land finding that the annual value is not equal to the rent-charge relinquishes possession, he cannot be sued after such relinquishment. (See *In re* Blackburn, &c. Building Society, 42 C. D. 343.) Whether the benefit of a covenant to pay a rent-charge runs with the rent-charge is also doubtful. See p. 192, note (*q*), *supra*.

BUILDING GRANT.

and all persons authorized by him or them, once in every year in the daytime, on giving to the tenant or occupier for the time being of the said premises one week's notice in writing of his or their intention so to do, to enter into and upon the said premises in order to examine the condition thereof: AND ALSO will at all times insure and keep insured against loss or damage by fire the said messuage or dwelling-house in the —— office, or some other public insurance office in the sum of £—— at least, and will on demand produce to the said A. B., his heirs or assigns, the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and will whenever any loss or damage by fire shall happen to the said messuage or dwelling-house or any part thereof forthwith expend the money received under such insurance as aforesaid, and also such other moneys as may be necessary for the purpose, in rebuilding or reinstating the same (*r*): AND ALSO, that the said C. D., his heirs or assigns, will not alter or permit to be altered the external plan or elevation of the said messuage or dwelling-house without the previous consent in writing of the said A. B., his heirs or assigns, nor will without such consent as aforesaid erect upon the said piece of land any other messuage or building than the said messuage or dwelling-house now in course of erection as aforesaid except a stable, or coach-house, or green-houses, or conservatories, in connection therewith: AND ALSO that the said C. D., his heirs or assigns, will not at any time without such consent as aforesaid carry on, or permit to be carried on upon the said premises, any trade or business whatsoever, or use or permit the same to be used for any other purpose than as a private dwelling-house (*s*). [AND IT IS HEREBY DECLARED that the restrictive covenants hereinbefore contained are entered into with the said A. B. as the owner of the remainder

to insure against fire,

to pay premiums of insurance, and produce policy and receipts.

Not to alter external elevation without consent.

Not to erect other building or

carry on any trade without consent.

Declaration that restrictive covenants are entered into with grantor

(*r*) The covenants to build, repair, and insure, &c., do not run as to the burden of them with the land nor as to the benefit of them with the rent, and cannot be made to do so either at law or in equity. Consequently an assign of the rent cannot sue, nor can an assign of the land be sued on them. (Haywood *v.* Brunswick Building Society, 8 Q. B. D. 403.) These observations do not apply to the restrictive covenants which follow, as to which see the next note.

Covenants to build, repair, &c., in fee farm grant, do not run with land.

(*s*) The restrictive covenants in the above Precedent are intended to prevent the value of the land retained by the grantor from being depreciated by the acts prohibited. They can be enforced by injunction against the grantee, and all persons deriving title under him, as volunteers or as purchasers with notice.

Restrictive covenants, how, and by and against whom they can be enforced.

BUILDING GRANT.

of the said —— estate of which the land hereby conveyed forms part, for the benefit and protection of that estate.] PROVIDED ALWAYS, and it is hereby declared (*t*), that if the said messuage or dwelling-house shall not be completed within twelve calendar months from the date hereof pursuant to the covenant in that behalf hereinbefore contained, or if the said messuage or dwelling-house shall be destroyed or damaged by fire or shall fall into disrepair, and the said C. D., his heirs or assigns, shall fail to re-build or repair the same for the space of three calendar months after a notice in writing requiring him or them so to do shall have been given to him or them, or left at or upon the said premises hereby conveyed by or on the part of the said A. B., his heirs or assigns, then and in such case and so often as the same shall happen and notwithstanding the waiver of any previous default, it shall be lawful for the said A. B., his heirs or assigns, owner or owners for the time being of the said rent, at any time during the lives of the said A. B. and C. D., and the following persons, namely (*names*), or the lives or life of the survivors or survivor of them, or within twenty-one years after the decease of such survivor (*u*), to enter into and upon the said premises, and to execute and do such works, acts, and things thereon as shall be necessary or proper for the completion of the said messuage or dwelling-house or for re-building or repairing the same as the case may require, and to remain in the possession or receipt of the rents and profits of the said premises until thereby or otherwise, all sums of money expended by him or them in or about such works, acts, and things as aforesaid, together with all costs and expenses occasioned by the exercise of this power, shall be fully paid and satisfied.

as owner of land retained by him.

Power to grantor in case of breach of covenant as to building, repairs, &c. to enter and do necessary work.

IN WITNESS, &c.

(*t*) This is a power taking effect under the Statute of Uses, and is exerciseable by the owner of the rent for the time being. It is more convenient than an absolute power of re-entry, such as has been inserted in this Precedent in former editions, as the latter power could not (it is apprehended) be exercised after an assignment of the rent. (See Flower *v.* Hartopp, 6 Beav. 476; Hunt *v.* Bishop, 8 Exch. 680; Hunt *v.* Remnant, 9 Exch. 640; Jenkins *v.* Jones, 9 Q. B. D. 131)

(*u*) This limit is inserted in order to prevent an infringement of the rule against perpetuities. (See L. & S. W. Rail. Co. *v.* Gomm, 20 C. D. 582; Dunn *v.* Flood, 25 C. D. 629.)

No. CV.

APPOINTMENT *of* LAND *for* BUILDING *by* TENANT FOR LIFE *under a* POWER *in* CONSIDERATION *of a perpetual* RENT-CHARGE.

BUILDING APPOINTMENT BY TENANT FOR LIFE UNDER POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*grantor*), of the first part, and C. D. of, &c. (*grantee*), of the other part: WITNESSETH that the said A. B., as beneficial owner, by virtue of the power to him for this purpose limited by an indenture of settlement dated the —— day of ——, and made between, &c., and of all other powers (if any) enabling him in this behalf, and in consideration of the rent hereinafter limited, and the covenants of the said C. D. hereinafter contained, hereby appoints that ALL, &c. (*here describe the property to be appointed*): (EXCEPT and reserved out of this present appointment all springs of water issuing, arising, or flowing out of, in, through, or upon the said plot of ground hereby appointed, or any part thereof, with liberty for the said A. B. and other the person or persons for the time being entitled to the said excepted premises under the limitations of the said indenture of settlement, to enter upon the said hereditaments and to make and maintain thereupon or therein any reservoirs and channels for conveying the said water from or through the same or any part thereof, and from time to time to alter and repair the same reservoirs and channels, paying to the owner or owners of the said premises for the time being, for all damage which may be done to him or them in the exercise of the powers hereby reserved), shall henceforth go, remain, and be TO THE USES following (that is to say): TO THE USE that the said A. B. and other the person or persons who under the limitations of the said indenture of settlement would for the time being be entitled to the hereditaments and premises hereby appointed, if these presents had not been made, may from and after the date of these presents for ever receive a perpetual yearly rent-charge of £——, issuing out of the said hereditaments hereby appointed and payable by equal half-yearly payments, on the —— day of ——, and the —— day of ——, in every year, the first half-yearly payment to be made on the —— day of —— next: AND

Parties.

Tenant for life in exercise of power,

appoints parcels, (except springs of water).

To use that grantor and other persons entitled under settlement may receive rent-charge.

BUILDING APPOINTMENT BY TENANT FOR LIFE UNDER POWER.

subject to the said rent-charge, and to the statutory powers and remedies for recovering and compelling payment thereof, To THE USE of the said C. D. in fee simple: (*Proviso qualifying statutory covenant for title when the tenant for life is not the settlor, supra*, p. 277.) AND THE SAID C. D. hereby covenants with the said A. B., and other the person or persons for the time being entitled to the said rent under the limitation aforesaid, that, &c. (*Covenants by grantee and power of entry, as in last Precedent, mutatis mutandis.*)

Covenants by grantee, and power of entry.

IN WITNESS, &c.

No. CVI.

CONVEYANCE OF FREEHOLDS SUBJECT TO PERPETUAL RENT.

CONVEYANCE *of* FREEHOLDS *which are* SUBJECT *to a perpetual Yearly* RENT-CHARGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated &c. and made between G. H. of, &c., of the one part, and the said A. B. of the other part, the plot of ground hereinafter described was conveyed by the said G. H. to the use that the said G. H. should have in fee simple a perpetual yearly rent-charge of £—— issuing out of the said land and payable as therein mentioned, and subject to the said rent-charge, and to the statutory powers and remedies for recovering and compelling payment thereof, to the use of the said A. B., in fee simple; and the indenture now in recital contains a covenant by the said A. B. for the payment of the said yearly rent-charge and certain other covenants by him as to buildings and otherwise: AND WHEREAS since the date and execution of the said indenture, the said A. B., in performance of a covenant in that behalf therein contained, has erected a messuage or dwelling-house upon the said plot of ground: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments hereinafter described (subject as hereinafter mentioned), at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration

Parties.

Recite conveyance of land to the vendor in fee subject to a perpetual rent-charge.

That vendor has erected a dwelling-house on the land conveyed to him.

Agreement for sale of hereditaments subject to the yearly rent-charge.

of the sum of £—— to the said A. B. paid by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT plot of ground, &c. (*parcels*), and the messuage or dwelling-house which has been erected thereon as aforesaid: TO HOLD the same unto and to the use of the said C. D. in fee simple subject to the said yearly rent-charge of £——, and the statutory powers and remedies for recovering and compelling payment thereof, and subject also to the covenants of the said A. B. contained in the said indenture: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his heirs or assigns, will at all times pay the said rent-charge and observe and perform the covenants of the said A. B. contained in the said indenture and keep indemnified the said A. B., and his estate and effects, from and against all claims and demands on account thereof.

IN WITNESS, &c.

CONVEYANCE OF FREEHOLDS SUBJECT TO PERPETUAL RENT.

Vendor conveys land and dwelling-house to purchaser in fee, subject to perpetual rent-charge.

Covenant by purchaser to pay rent-charge and observe grantor's covenants.

No. CVII.

CONVEYANCE *of a* PERPETUAL *yearly* RENT *issuing out of* FREEHOLDS.

CONVEYANCE OF A FEE FARM RENT.

THIS INDENTURE, made the —— day of ——, BETWEEN G. H. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*recite conveyance as in last precedent*): AND WHEREAS the said G. H. hath agreed to sell the said yearly rent-charge of £——, and the benefit of all securities for the same to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said G. H. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said G. H., as beneficial owner, hereby conveys unto the said C. D. THE SAID yearly rent-charge of £—— limited to the said G. H. in fee simple by the hereinbefore recited indenture, and all powers, remedies, and means whatsoever vested in the said

Parties.

Agreement for sale.

Conveyance by vendor of perpetual rent

CONVEYANCE OF A FEE FARM RENT.

to purchaser in fee.

G. H. by virtue of the said indenture or otherwise for enforcing and obtaining payment thereof: To HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

No. CVIII.

CONVEYANCE IN CONSIDERATION OF FEE FARM RENT BY MORTGAGEE AND MORTGAGOR.

CONVEYANCE *of Land by* MORTGAGEE *and* MORTGAGOR *in consideration of perpetual* RENT-CHARGE, *which is* LIMITED *to the* MORTGAGEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), mortgagee in fee of the hereditaments hereinafter described under an indenture dated the —— day of ——, of the first part, C. D. of, &c. (*mortgagor*), owner in fee of the said hereditaments subject to the said mortgage, of the second part, and E. F. of, &c. (*purchaser*), of the third part: WITNESSETH, that in consideration of the rent hereinafter limited, and of the covenants of the said E. F. hereinafter contained, the said A. B., as mortgagee, at the request of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F.: ALL, &c. (*parcels*): To HOLD the same unto the said E. F. in fee simple (*To the use that A. B. shall receive rent-charge, supra*, p. 340), and subject as aforesaid to the use of the said E. F., in fee simple: AND the said E. F. hereby covenants with the said A. B., his heirs and assigns, that, &c. (*covenants and provisions as in Precedent No. CIV., substituting E. F. for C. D.*): AND IT IS HEREBY DECLARED, that the rent hereby limited to the said A. B. as aforesaid, and the benefit of the covenants herein contained, shall be subject to such and the like right or equity of redemption, as the hereditaments hereby conveyed to the said E. F. as aforesaid were subject to under or by virtue of the said indenture of mortgage immediately before the execution of these presents.

Conveyance by mortgagee and mortgagor of parcels to purchaser, to use that mortgagee may receive rent-charge, &c., and subject thereto to purchaser in fee.

Declaration that provisions in mortgage shall apply to rent.

IN WITNESS, &c.

No. CIX.

CONVEYANCE *of* ONE *of several* DWELLING-HOUSES *subject to a* PROPORTIONATE PART *of a perpetual* RENT-CHARGE *reserved in respect of* ALL *the* HOUSES *by the* ORIGINAL GRANT.

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: (*Recite conveyance of land to A. B. in fee, subject to perpetual rent-charge of* £4): AND WHEREAS pursuant to a covenant for that purpose contained in the hereinbefore recited indenture, the said A. B. hath erected and completed four dwelling-houses on the piece of land thereby conveyed, or on some part thereof: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the dwelling-house and hereditaments hereinafter described (being one of the said four dwelling-houses), subject to the payment of the yearly rent of £1, part of the said yearly rent of £4 reserved by the hereinbefore recited indenture, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT messuage or dwelling-house situate and being, &c., and the buildings and garden adjoining or belonging to the said messuage or dwelling-house, including the use, in common with the other persons entitled to the same, of the pump situate, &c., and of the drains appertaining to or connected with the said messuage or dwelling-house, and also including all other liberties granted by the said indenture so far as the same relate to the hereditaments hereby conveyed: TO HOLD the same unto and to the use of the said C. D., in fee simple: AND IT IS HEREBY AGREED AND DECLARED, that as between the hereditaments hereby conveyed and the other hereditaments comprised in the said indenture, the hereditaments hereby conveyed shall henceforth be subject and liable to the payment of the yearly rent of £1, part of the said yearly rent of £4 reserved by the said indenture in exoneration of the said other hereditaments, and the said other hereditaments shall be subject and liable to the payment

Parties.

Recite original conveyance reserving perpetual rent.

That grantee has erected four houses.

Agreement for sale of one of such houses, subject to proportion of rent-charge.

Witnessing part.

Vendor conveys parcels

to purchaser in fee, subject to proportionate part of rent-charge, and to covenants in original grant applicable to house purchased.

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

of the residue of the said rent of £4 in exoneration of the said hereditaments hereby conveyed: AND THE SAID C. D. hereby covenants with the said A. B. that he the said C. D., his heirs or assigns, will at all times hereafter pay the said yearly rent of £1, part of the said yearly rent of £4 reserved by the said indenture and observe and perform the covenants in the said indenture contained, so far as the same relate to the hereditaments hereby conveyed, and will keep indemnified the said A. B., his heirs and assigns, from and against all claims and demands whatsoever, by reason of the non-payment of the said yearly rent of £1, or the breach of the said covenants so far as the same relate as aforesaid: AND THE SAID A. B. hereby covenants with the said C. D., THAT the said A. B., his heirs or assigns, will at all times hereafter pay the yearly rent of £3 (being the residue of the said yearly rent of £4), and observe and perform the covenants in the said indenture contained, so far as the same relate to the hereditaments not hereby conveyed, and will keep indemnified the said C. D., his heirs and assigns, from and against all claims and demands whatsoever by reason of the non-payment of the said yearly rent of £3, or the breach of the said covenants so far as the same relate as last aforesaid (*y*): AND THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the said indenture and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

Covenants by vendor that rent and covenants have been paid and performed, to pay his proportion of rent, and observe covenants applicable to houses not sold, and to indemnify purchaser therefrom.

Covenants by purchaser, to pay his proportion of rent and observe covenants applicable to purchased property, and to indemnify vendor therefrom.

IN WITNESS, &c.

No. CX.

MUTUAL COVENANTS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

DEED *containing* MUTUAL COVENANTS *by several* PURCHASERS *for* INDEMNIFYING *each of them against the* PAYMENT *of more than his* PROPORTIONATE PART *of a* YEARLY RENT *which is* CHARGED *on* ALL *the* LANDS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one of the four purchasers*), of the first part, C. D.

(*y*) See p. 228, note (*o*), *supra*.

of, &c. (*another of the four purchasers*), of the second part, E. F. of, &c. (*another of the four purchasers*), of the third part, and G. H. of, &c. (*the other of the four purchasers*), of the fourth part: (*Recite indenture whereby a piece of land situate, &c., and therein particularly described, was granted by L. M. to N. O., his heirs and assigns, reserving a yearly rent-charge of* £12 *to L. M., his heirs and assigns, and subject to the covenant that N. O. should build four messuages or dwelling-houses on the said piece of land within a given time and according to a plan, &c.*) AND WHEREAS pursuant to the covenant in that behalf contained in the said indenture as aforesaid, the said N. O. erected four messuages or dwelling-houses on the said piece of land comprised in the said indenture: AND WHEREAS the said N. O. has lately sold and conveyed the said several messuages and premises to the several persons parties hereto at and under apportioned parts of the said yearly rent of £12, and subject to the covenants and conditions contained in the said indenture, and on the grantee's part to be observed and performed so far as the same relate to the said premises respectively: AND WHEREAS the short particulars of the several premises so respectively sold and conveyed to the several persons parties hereto as aforesaid, the dates of their respective conveyances and the amount of the apportioned yearly rents reserved thereby respectively are respectively set forth opposite to the names of the several persons parties hereto in the schedule hereunder written: AND WHEREAS upon the treaty for the aforesaid sales, it was agreed that the several persons parties hereto should enter into such mutual covenants as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, each of them the said several persons parties hereto hereby covenants with the others of them in manner following, that is to say, THAT each of the several persons parties hereto, his heirs and assigns, will henceforth for and in respect of the premises conveyed to him as aforesaid, pay the apportioned yearly rent set opposite to his name in the fourth column of the schedule hereunder written, and duly observe and perform the covenants contained in the said indenture and on the grantee's part to be observed and performed so far as the same relate to the last-mentioned premises, and will at all times hereafter keep indemnified the other parties

MUTUAL COVENANTS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

That four houses have been built on land pursuant to covenant.

Sale of the messuages at apportioned parts of the rent and covenants.

Particulars of premises, dates of conveyances, and amount of apportioned rents contained in schedule.

Agreement that purchasers should enter into mutual covenants.

Witnessing part.

Each of the purchasers covenants with the others to pay apportioned rent set opposite his name in schedule, and observe covenants that relate to premises conveyed to him, and to indemnify the

MUTUAL COVENANTS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

others against such apportioned rent and covenants.

hereto, and their respective heirs and assigns, and every of them, from and against all actions, proceedings, claims, and demands whatsoever, for or by reason or on account of the non-payment of the said apportioned rent, or any part thereof, or any breach of the said covenants so far as the same relate to the last-mentioned premises.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CXI.

CONVEYANCE OF FREEHOLDS, RESERVING MINERALS.

CONVEYANCE *of* FREEHOLD LAND, *reserving the* MINERALS *to the* VENDOR, *with* POWERS *for working the same* (*z*).

Parties.

Agreement for sale of land,

reserving minerals.

Witnessing part.

Vendor conveys parcels.

Exception and reservation of mines and minerals,

and liberty of ingress, &c.,

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments hereinafter described, subject to such exceptions and reservations as are hereinafter expressed, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*) (except and reserved as hereinafter is mentioned) TO HOLD the same unto and to the use of the said C. D., in fee simple: AND IT IS DECLARED that there shall be excepted and reserved unto the said A. B., in fee simple, out of the conveyance hereby made, all mines, veins, seams, and beds of coal, ironstone, and other minerals whatsoever already found, or which may hereafter be found under the lands hereby conveyed, with full liberty of ingress, egress, and regress at all times for the said A. B., his

(*z*) See p. 197, *supra*

heirs or assigns, and his or their servants, agents, and workmen, into and upon the said lands, and either with or without horses and other cattle, carts and waggons and other carriages, for the purpose of searching for, working, getting, and carrying away the said mines and minerals, and with full liberty also for the said A. B., his heirs or assigns, to sink, drive, make, and use pits, shafts, drifts, adits, aircourses, and watercourses, and to erect and set up fire and other engines, machinery, and works, and to lay down railroads and other roads in, upon, under, and over the said lands, or any of them, for the purpose of more conveniently working and carrying away the said mines and minerals, and also to appropriate and use any part of the surface of the said lands for depositing, placing, and heaping thereon the minerals, waste, rubbish, and other substances which may be gotten from the said mines, and generally to do all other acts and things necessary or proper for working and getting the said mines and minerals according to the most approved practice of mining in the district: PROVIDED ALWAYS, that the said A. B., his heirs or assigns, shall pay to the said C. D., his heirs or assigns, the annual sum of £—— for every acre, and so in proportion for any less quantity than an acre of land, the surface whereof shall be appropriated or used for any of the purposes aforesaid, so long as such appropriation or use shall continue, and until the surface shall be restored, as nearly as may be practicable, to its original state and condition before such appropriation or use commenced: PROVIDED ALSO, that the workings of the said mines shall be conducted in such a manner as not to endanger any buildings now being on the said lands, or which may be hereafter erected on the site of or within —— yards of the site of any present buildings, and generally to do as little damage or injury to the surface of the said lands as shall be consistent with the proper working of the said mines: PROVIDED ALSO, that the said A. B., his heirs or assigns, shall pay to the said C. D., his heirs or assigns, adequate compensation for all damage or injury which he or they, or his or their tenants, may sustain by reason of the working of the said mines, or the exercise of any of the liberties or privileges hereby excepted and reserved, the amount of such compensation, and all other matters in difference which may arise between the parties in connection with the said excepted mines, minerals, liberties, and privileges,

CONVEYANCE OF FREEHOLDS, RESERVING MINERALS.

and liberty to sink pits

and to appropriate surface for heap room.

Vendor to pay rent for surface appropriated,

and workings to be conducted so as not to endanger buildings, &c.

Vendor to pay compensation for damage.

CONVEYANCE OF FREEHOLDS, RESERVING MINERALS.

to be settled by a single arbitrator [or two arbitrators one to be appointed by each party] under and subject to the provisions of the Arbitration Act, 1889.

IN WITNESS, &c.

No. CXII.

CONVEYANCE OF MINES WITHOUT SURFACE.

CONVEYANCE *of* MINES *of* COAL, IRONSTONE, *and* FIRECLAY, *to be* WORKED *through the* ADJOINING PROPERTY, *and without* SURFACE RIGHTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:

Agreement for sale.

WHEREAS the said A. B. hath agreed to sell to the said C. D. the mines and minerals hereinafter described at the price of £——:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*),

Vendor conveys mines and minerals;

the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the mines, veins, seams, and beds of coal, limestone, and fireclay, lying in or under the pieces of land situate in the parish of ——, in the county of ——, which are specified in the schedule hereunder written, and are delineated and coloured pink in the map hereunto annexed,

to be worked by underground workings only,

but so that the said mines and minerals shall and may be worked, gotten, and carried away by means of outstroke or underground workings, through any adjoining mines or lands belonging to or held by the said C. D., his heirs or assigns, or which he or they may for the time being be authorized to use for that purpose,

surface not to be entered on or interfered with, and purchaser to pay compensation for damage.

and that the surface of the said lands specified in the schedule hereunder written, or any of them, shall not be entered upon or in any manner interfered with for any of the purposes aforesaid, or for any purpose connected with the said mines and minerals, and so also that the said C. D., his heirs or assigns, shall do no damage or injury to the surface of the said lands in or about the working and getting of the said mines and minerals, or in anywise relating thereto:

To HOLD the said mines and premises hereby conveyed, unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

CONVEYANCE OF MINES WITHOUT SURFACE.

Habendum to purchaser in fee.

THE SCHEDULE ABOVE REFERRED TO.

No. CXIII.

CONVEYANCE *to a* SUB-PURCHASER *who* PAYS *the* SAME SUM *as the* ORIGINAL PURCHASER (*a*).

CONVEYANCE TO SUB-PURCHASER WHO PAYS SAME SUM.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*original purchaser*), of the second part, and E. F. (*sub-purchaser*), of the third part. WHEREAS the said A. B. lately agreed to sell to the said C. D. the hereditaments hereinafter described, at the price of £1000: AND WHEREAS the said C. D. has agreed to sell to the said E. F. the same hereditaments at the price of £1000: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1000 to the said A. B. paid by the said E. F. at the request of the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby respectively acknowledge) the said A. B., as beneficial owner, at the request of the said C. D., hereby conveys and the said C. D. hereby confirms unto the said E. F., &c. (*conveyance of freeholds to E. F. in fee simple, supra*, p. 217).

IN WITNESS, &c.

Parties.

Recite agreements for sale and sub-sale.

Original vendor, at request of original purchaser, conveys to sub-purchaser in fee simple.

(*a*) The stamp will be an *ad valorem* on £1,000. (See 54 & 55 Vict. c. 39, s. 58 (4).)

No. CXIV.

CONVEYANCE TO SUB-PURCHASER AT HIGHER PRICE.

CONVEYANCE *to a* Sub-Purchaser, *who pays a* Higher Price *than the* Original Purchaser (*b*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*original purchaser*), of the second part, and E. F., of, &c. (*sub-purchaser*), of the third part: Whereas the said A. B. lately agreed, &c. (*agreement for sale by A. B. to C. D. for* £1000): And whereas the said C. D. has since agreed to sell to the said E. F. the same hereditaments at the price of £1050: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1000 to the said A. B. and the sum of £50 to the said C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof respectively the said A. B. and C. D. hereby acknowledge), the said A. B., as beneficial owner, at the request of the said C. D. hereby conveys, and the said C. D. hereby confirms unto the said E. F., &c. (*Conveyance of freeholds to E. F. in fee simple*, p. 217.)

Original agreement for sale.

Agreement between purchaser and sub-purchaser.

Witnessing part.

Conveyance by vendor and original purchaser.

In witness, &c.

No. CXV.

CONVEYANCE TO SUB-PURCHASER AT LESS SUM.

CONVEYANCE *to a* Sub-Purchaser, *who pays a* Less Sum *than the* Original Purchaser (*c*).

THIS INDENTURE, &c. (*date, parties, and recitals, the same as in the last Precedent, substituting* £950 *for* £1050): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £950 by the said E. F. and the sum of £50 by the said C. D. paid to the said A. B. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*conveyance by A. B. and confirmation by C. D. as in last Precedent*).

Considerations.

Conveyance.

In witness, &c.

(*b*) The stamp will be an *ad valorem* on the £1,050. (See 54 & 55 Vict. c. 39, s. 58 (4).)

Stamp.

(*c*) The stamp will be an *ad valorem* on the £950. (See 54 & 55 Vict. c. 39, s. 58 (4).)

No. CXVI.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *and* EXECUTORS *under an* ORDER *in an* ADMINISTRATION ACTION (*d*).

CONVEYANCE UNDER DECREE OR ORDER IN ADMINISTRATION SUIT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., being seised in fee simple of the hereditaments intended to be hereby conveyed, made his will, dated, &c., and thereby devised all his lands, tenements, and hereditaments, and other real estate, unto and to the use of the said A. B. and C. D., their heirs and assigns, upon the trusts therein declared concerning the same, and the said testator appointed the said A. B. and C. D. to be the executors of his said will: AND WHEREAS the said testator died on the —— day of —— without having revoked or altered his said will, and the same was shortly afterwards duly proved by the said executors thereof in the principal Probate Registry of the High Court of Justice: AND WHEREAS by an order of the High Court of Justice (Chancery Division), dated the —— day of ——, and made in the matter of the estate of X. Y., deceased, and in an action of, &c., it was (amongst other things), ordered that the real estate of the said testator be sold: AND WHEREAS in pursuance of the said order the real estate of the said testator was, on the —— day of —— last, with the approbation of the judge, put up for sale by public auction in several lots, and the hereditaments intended to be hereby conveyed constituted Lot 2 at the said sale: AND WHEREAS by the conditions of the said sale it was provided that each purchaser should at the time of the sale pay a deposit of £5 per cent. on the amount of his purchase-money to O. P., the person appointed by the judge to receive the same: And it was also provided that each purchaser was, in addition to the amount of his bidding at the sale, to pay

Parties.

Will of X. Y., devising all his real estate to trustees.

Order of Court for sale.

That property was put up for sale.

Conditions of sale as to payment of purchase-money and value of timber, &c.

(*d*) On a sale under an order of the Court, all persons having a *legal* interest in the property, whether parties to the suit or not, should concur in the conveyance, but the purchaser is not entitled to the concurrence of any persons being parties to the suit, or otherwise bound by the proceedings therein, whose interests are merely equitable. (Dart, 770; Cole *v.* Sewell, 17 Sim. 40; *Re* Williams' Estate, 5 De G. & Sm. 515.)

Proper parties on sale under order of Court.

CONVEYANCE UNDER DECREE OR ORDER IN ADMINISTRATION SUIT.

the value of all timber and timber-like trees, tellers, and pollards (if any), on the lot purchased by him, down to 1*s.* per stick inclusive, the amount thereof to be ascertained by valuation as therein mentioned: And also that each purchaser was, under an order for that purpose to be obtained by him, to pay the amount of his purchase-money after deducting the amount paid as a deposit, together with the amount of the aforesaid valuation, into Court, to the credit of the said cause, on or before the —— day of —— then next, and if the same should not be so paid, then the purchaser was to pay interest on his purchase-money, including the amount of such valuation, at the rate of £5 per cent. per annum, from the said —— day of —— next to the day on which the same should be actually paid: AND WHEREAS at the said sale the said E. F. was the highest bidder for, and was declared the purchaser of, the said Lot 2 at the sum of £2,000, and he thereupon paid to the said O. P. the sum of £100 as a deposit, pursuant to the said condition in that behalf, which deposit has been since paid by the said O. P. into Court to the credit of the said cause: AND WHEREAS the chief clerk of the judge certified the result of the said sale by his certificate, dated the —— day of ——, and the said certificate was approved and signed by the judge on the —— day of ——, and has been since duly filed in the said Court: AND WHEREAS the timber, timber-like trees, tellers, and pollards on the said lot have been valued pursuant to the said condition in that behalf at the sum of £150: AND WHEREAS the said E. F. has paid the sums of £1,900 and £150, and also the sum of £10, the amount certified to be due for interest thereon from the said —— day of —— last up to the said day of payment (making together the sum of £2,060), into Court to the credit of the said cause, to an account entitled "The account of the proceeds of the sale of the real estates of X. Y., deceased," as appears by the receipt of one of the cashiers of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said order, and for the purpose of carrying into effect the said sale, and in consideration of the said sums of £100 and £2,060, paid by the said E. F. as hereinbefore is mentioned, the said A. B. and C. D., as trustees, hereby convey, &c. (*Conveyance to E. F. in fee simple, supra*, p. 217.)

That purchaser was declared the highest bidder, and paid deposit.

Chief clerk's certificate of result of sale.

Valuation of timber.

Payment of purchase-money into Court.

Witnessing part.

Trustees convey parcels to purchaser in fee.

IN WITNESS, &c.

No. CXVII.

CONVEYANCE *on a* SALE *made under* THE SETTLED ESTATES ACT, 1877 (40 & 41 *Vict. c.* 18)(*e*).

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN R. S. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., being seised in fee simple of the farm and lands intended to be hereby conveyed, made his will, dated, &c., and thereby devised all his messuages, lands, tenements, and hereditaments, being freehold of inheritance, to the use of A. B., of, &c., and his assigns during his life, without impeachment of waste, with remainders over (*Recite death of testator, and probate of his will*): AND WHEREAS by an indenture (*Recite a conveyance by A. B. of his life estate to R. S. as a purchaser*): AND WHEREAS by an order of the High Court of Justice (Chancery Division) dated the —— day of ——, and made in the matter of the Settled Estates Act, 1877, and in the matter of a farm and lands known as —— farm, situate in the parish of ——, in the county of ——, and containing —— or thereabouts (meaning the farm and lands intended to be hereby conveyed), and which order was made upon the petition of the said R. S., the Court being of opinion that it was proper and consistent, with a due regard for the interests of all parties entitled under the said will of the said X. Y., that a sale should be authorized to be made of the farm and lands therein described (being the farm and lands intended to be hereby assured), did order that the said farm and lands be sold accordingly, with the approbation of the judge, subject to the provisions and restrictions in the said Act contained; and the Court did further order that the money

Parties.

Will of testator devising property to A. B. for life, with remainders over.

Order of Court for sale under Settled Estates Act.

(*e*) Sales under this Act are now rare, as in most cases of settled estates a sale can be made without an application to the Court under the S. L. A. 1882. In the above precedent it is supposed that the tenant for life has aliened his life estate, in which case the alienee cannot sell under the Act of 1882 without the concurrence of the tenant for life, which concurrence it is supposed that he cannot obtain; he therefore applies to the Court under sect. 23 of the Act of 1877. The Act requires the consent or concurrence of divers other persons interested in the property (sect. 24), but the purchaser is not bound to see whether such consent or concurrence has been obtained. (Conv. Act, 1881, sect. 70. In *Re* Hall Dare's Contract, 21 C. D. 41.)

Provisions of Settled Estates Act as to sales.

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

to arise by such sale be paid into Court to the credit of *Ex parte* R. S., in the matter of the Settled Estates Act, 1877; and the Court did further order that the said R. S. should execute the deed or deeds of conveyance of the said farm and lands to the purchaser or purchasers thereof on such sale being effected;

Pursuant to order lands put up for sale.

And whereas in pursuance of the said order the said farm and lands intended to be hereby conveyed were on the —— day of —— put up for sale by public auction in one lot, with the approbation of the judge, and the said C. D. was the highest bidder for, and was declared the purchaser of, the said farm and

Chief clerk's certificate.

lands at the price of £——; And whereas the result of the said sale has been certified by the chief clerk of the judge, by his certificate dated the —— day of ——, which certificate was approved by the judge on the —— day of ——, and has

Payment of purchase-money into Court.

been since filed in the said Court: And whereas the said C. D. has paid the said purchase-money of £—— into Court to the credit of *Ex parte* R. S., in the matter of the said Act, "The proceeds of the sale of settled estates under the will of X. Y.," as appears by the receipt of one of the cashiers of the Bank of England:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said order in this behalf, and for the purpose of

Consideration.

carrying into effect the said sale, and in consideration of the said sum of £——, paid by the said C. D., as hereinbefore is mentioned, the said R. S. as beneficial owner, in exercise of the power for this purpose conferred upon him by the said Act, and

Vendor revokes uses of will, and appoints parcels to purchaser in fee.

of all other powers (if any) him hereunto enabling, hereby revokes all the uses, trusts and provisions, by and in the said will of the said X. Y. declared and contained concerning the farm, lands and hereditaments hereinafter described, and hereby appoints that all, &c. (*parcels*), shall, from and immediately after the execution of these presents, go, remain, and be to the use of the said C. D. in fee simple: (*Proviso qualifying statutory covenant for title, supra*, p. 277): And the said R. S. hereby

Acknowledgment and undertaking.

acknowledges the right of the said C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

In witness, &c.

The Schedule above referred to.

No. CXVIII.

CONVEYANCE *on a* SALE *under the* PARTITION ACT, 1868, *where the* PROPERTY *has* DESCENDED *on* TWO CO-HEIRESSES, *of whom* ONE *is an* INFANT (*f*). CONVEYANCE UNDER PARTITION ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one co-heiress*), of the first part, C. D. of, &c., the person appointed, as hereinafter appears, to convey in the place of E. F., an infant (*other co-heiress*), of the second part, and G. H. of, &c. (*purchaser*), of the third part: WHEREAS X. Y., late of, &c., died on the —— day of ——, 18—, intestate, leaving the said A. B. and E. F. his only children and co-heiresses at law, and he was at his death seised in fee simple of the hereditaments intended to be hereby conveyed: AND WHEREAS the said A. B. attained the age of twenty-one years on the —— day of ——, but the said E. F. is an infant: AND WHEREAS by an order of the High Court of Justice (Chancery Division), dated, &c., and made in an action, &c., it was ordered on the request of the plaintiff that the hereditaments intended to be hereby conveyed be sold: AND it was declared that upon such sale the defendant E. F. would be a trustee of her undivided moiety of the said hereditaments for the purchaser thereof within the meaning of the Trustee Act, 1850, and the Court

Parties.

Recite death of father of co-heiresses intestate.

Decree of Court ordering sale.

(*f*) By the Partition Act, 1868 (31 & 32 Vict. c. 40), it is provided that in suits for partition, where a decree for partition might have been made, if from the nature of the property or the number of the parties interested therein, or the absence or disability of some of those parties, or any other circumstance, a sale of the property is considered by the Court to be more beneficial than a division, the Court may, on the request of any of the parties, direct a sale (sect. 3); *or* if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property in question, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale (sect. 4); or if any party interested in the property requests the Court to direct a sale and a distribution of the proceeds, the Court may, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting the sale, direct a sale. (Sect. 5.) The 7th section provides that sect. 30 of the Trustee Act, 1850, shall apply to cases where, in suits for partition, the Court directs a sale instead of a division of the property. (See also the Partition Amendment Act (39 & 40 Vict. c. 71).)

Provisions of Partition Act.

CONVEYANCE UNDER PARTITION ACT.

appointed the said C. D. to convey the moiety of the said E. F. accordingly: AND WHEREAS (*recite sale by auction, and G. H. declared highest bidder—chief clerk's certificate—and payment of purchase money, supra*, p. 357, *mutatis mutandis*): NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said order, and in consideration, &c., the said A. B., as beneficial owner, as to one moiety of the hereditaments hereinafter described, and the said C. D., as to the other moiety thereof, for and on behalf of the said E. F., hereby respectively convey unto the said G. H., &c. (*Conveyance of parcels to G. H. in fee simple*).

Witnessing part.

One co-heiress and the person appointed on behalf of other co-heiress convey to purchaser in fee.

IN WITNESS, &c.

No. CXIX.

CONVEYANCE *of* FREEHOLDS *of a* LUNATIC *by the* COMMITTEE *of his* ESTATE (*g*).

CONVEYANCE OF FREEHOLDS OF LUNATIC BY COMMITTEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., a person of unsound mind, of the one part, C. D., of, &c., the committee of the estate of the said A. B., of the second part, and E. F., of, &c. (*purchaser*), of the third part:

Parties.

WHEREAS F. G., late of, &c., deceased, duly made his will, dated the —— day of ——, and thereby after making several devises and bequests, devised and bequeathed all the residue of his real and personal estate unto the said A. B. absolutely, and appointed L. M., of, &c., and N. O., of, &c., executors of his said will (*death of testator, and probate of his will*): AND WHEREAS the hereditaments hereinafter described form part of the residuary real estate devised by the said will as aforesaid: AND WHEREAS by an inquisition taken before ——, Esq., one of the Masters in Lunacy, on the —— day of ——, under a Commission of Lunacy duly issued for that purpose, the said A. B. was found to be a person of unsound mind: AND WHEREAS by an order of

Recite will devising residuary real estate to lunatic.

That hereditaments after described form part of residuary estate.

That by inquisition under commission lunatic was found to be a person of unsound mind,

(*g*) See p. 174, *supra*.

CONVEYANCE OF FREEHOLDS OF LUNATIC BY COMMITTEE.

Mr. Justice ——, one of the judges entrusted by the sign manual of her Majesty with the care and commitment of the custody of the persons and estates of lunatics, made on the —— day of ——, in the matter of A. B., a person of unsound mind, it was ordered that the said C. D. should be the committee of the person and estate of the said A. B.: AND WHEREAS the said C. D. as such committee as aforesaid hath agreed on behalf of the said A. B. to sell the hereditaments hereinafter described to the said E. F. at the price of £——, subject to the approbation of the judge in Lunacy: AND WHEREAS by an order of Mr. Justice ——, one of the judges entrusted as aforesaid, made on the —— day of ——, in the matter of A. B., a person of unsound mind, upon the petition of the said C. D., it was ordered that the said conditional agreement should be carried into effect, and that the said purchase-money or sum of £—— should be paid to the said C. D. as such committee as aforesaid, and that it should be referred to the Masters in Lunacy to settle and approve of a proper conveyance of the said hereditaments unto the said E. F. accordingly: AND WHEREAS ——, one of the Masters in Lunacy, has settled and approved of these presents as a proper conveyance, pursuant to the last mentioned order: NOW THIS INDENTURE WITNESSETH that, under and pursuant to the said order of the —— day of ——, and in consideration of the sum of £—— to the said C. D. as such committee as aforesaid paid by the said E. F. on or before the execution of these presents (the receipt whereof the said C. D. hereby acknowledges), the said A. B., as beneficial owner, acting by the said C. D. as such committee as aforesaid, and also the said C. D. hereby respectively convey unto the said E. F. ALL, &c. (*here describe parcels*), TO HOLD the same unto and to the use of the said E. F. in fee simple. IN WITNESS whereof the said C. D. as such committee as aforesaid, in the place and on behalf of the said A. B., has subscribed the name and affixed the seal of the said A. B., and the said C. D. hath hereunto set his hand and seal the day and year first above written.

and C. D. was appointed committee.

That committee has agreed to sell hereditaments.

Order of Judge in Lunacy that conditional agreement should be confirmed,

and that it should be referred to Masters in Lunacy to approve of conveyance.

That one of the Masters had settled and approved of this conveyance.

Consideration.

Lunatic by his committee

conveys parcels

to purchaser.

No. CXX.

CONVEYANCE TO TRUSTEES OF FRIENDLY SOCIETY.

CONVEYANCE *to the* TRUSTEES *of a* FRIENDLY SOCIETY *or* WORKING MEN'S CLUB *established under the* FRIENDLY SOCIETIES ACT, 1875 (*i*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c., the Trustees of the "—— Society" [or the "—— Working Men's Club"] being established at ——, in the county of ——, under the provisions of the Friendly Societies Acts (hereinafter called "the said trustees") of the other part: WITNESSETH, that in consideration of the sum of £——, on or before the execution of these presents paid to the said A. B. by the said trustees out of the funds of the society [*or* club] (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as beneficial

Consideration.

Vendor conveys

Provisions of Friendly Societies Act, 1875.

(*i*) A working-men's club is one of the societies authorized to be registered by the Friendly Societies Act, 1875, and is therein defined as a society for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation. (Sect. 8, sub-sect. 4.) The Act provides, that every society registered thereunder shall (*inter alia*) have a registered office, and from time to time, at some meeting of the society, by a resolution of a majority of the members present and entitled to vote thereat, appoint one or more trustees of the society, and send to the registrar a copy of every resolution, appointing a trustee, signed by the trustee so appointed, and by the secretary. (Sect. 14.) The Act also provides that a registered society may (if the rules so provide) hold, purchase, or take on lease in the names of the trustees for the time being of such society, in every county where it has an office, any land, and may sell, exchange, mortgage, lease, or build upon the same, and no purchaser, assignee, mortgagee, or tenant is bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees, and the receipt of the trustees is a discharge for all moneys arising from or in connection with such sale, exchange, mortgage, or lease. (Sect. 16, sub-sect. 2.) The Act also provides that all property belonging to a society shall vest in the trustees for the time being of the society for the use and benefit of the society and the members thereof, and of all persons claiming through the members, according to the rules of the society; and that upon the death, resignation, or removal of a trustee the property vested in such trustee vests in the succeeding trustees, either solely or together with any surviving or continuing trustees, and until the appointment of succeeding trustees, in such surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, subject to the same trusts without any conveyance. (Sect. 16, sub-sects. 3, 4.)

owner, hereby conveys unto the said trustees, ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the trustees in fee simple for the use and benefit of the said society [*or* club] and the members thereof, and of all persons claiming through the members according to the rules of the said society [*or* club].

IN WITNESS, &c.

CONVEYANCE TO TRUSTEES OF FRIENDLY SOCIETY.

parcels

to trustees of friendly society.

No. CXXI.

CONVEYANCE *by the* TRUSTEES *of a* FRIENDLY SOCIETY *or* WORKING MEN'S CLUB *to a* PURCHASER.

CONVEYANCE BY TRUSTEES OF FRIENDLY SOCIETY.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., C. D. of, &c., and E. F. of, &c., the trustees, &c. (*as in the last precedent*), of the one part, and I. K. of, &c. (*purchaser*), of the other part (*Recite last precedent*): AND WHEREAS at a meeting of the members of the said society held at ——, being their registered office, on the —— day of ——, 18—, it having been reported that the said G. H. was desirous of resigning his trusteeship, it was resolved by a majority of the members present and entitled to vote thereat, that the resignation of the said G. H. be accepted, and that the said A. B. be appointed a trustee of the said society in his place jointly with the said C. D. and E. F., and a copy of the said resolution, signed by the said A. B. and by the secretary of the society, was sent to the Registrar of Friendly Societies as required by the said Act (*k*): AND WHEREAS in pursuance of a resolution passed at a meeting of the members of the said society, held at ——, on the —— day of —— last, the said A. B., C. D., and E. F., as the trustees of the said society (hereinafter called "the said trustees") have agreed to sell to the said I. K. the fee simple of the messuage and hereditaments hereinafter

Parties.

Recite appointment of new trustee at a meeting of members.

Agreement by trustees to sell.

(*k*) A purchaser from a registered society should require the production of a copy of the rules with the acknowledgment of registry, bearing the seal or stamp of the Central Registry Office (sects. 11, 39), and also a copy of the resolution appointing the trustees by whom the sale is made.

CONVEYANCE BY TRUSTEES OF FRIENDLY SOCIETY.

described for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——, paid to the said trustees by the said I. K. on or before the execution of these presents (the receipt whereof the said trustees hereby acknowledge), the said trustees, as trustees, hereby convey unto the said I. K., ALL &c. (*parcels*): TO HOLD the same unto and to the use of the said I. K. in fee simple.

Consideration.

Trustees convey to purchaser in fee simple.

IN WITNESS, &c.

No. CXXII.

CONVEYANCE IN CONSIDERATION OF ANNUITY.

CONVEYANCE (*l*) *of* FREEHOLDS *to a* PURCHASER *in consideration of a* GROSS SUM, *and also of an* ANNUITY *charged on the* LAND (*m*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described, in consideration of the sum of £1,000, and also in consideration of an annual sum of £20, payable to the said A. B. for his life, and to be secured to him as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1,000 to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the annual sum or yearly rent-charge of £20 hereinafter limited and secured to the said A. B., the said A. B., as beneficial owner, hereby conveys unto the

Agreement for sale.

Witnessing part.

Consideration of gross sum, and of annuity.

Vendor conveys parcels

Stamp.

(*l*) The stamp on this deed will be £5 in respect of the gross sum, and £1 5*s.* in respect of the annuity. (See 54 & 55 Vict. c. 39, s. 56, sub-s. 3, and *supra*, p. 205.)

(*m*) As it is doubtful whether a conveyance of land to the use that the vendor shall receive thereout a rent-charge for his life and subject thereto to the use of the purchaser, comes within the 12th section of the 18 & 19 Vict. c. 15, it may be prudent to register the rent-charge under that section. But the risk of omitting to do so is very small, as the conveyance reserving the rent-charge would have to be produced to a subsequent purchaser, and if he has notice of it he will be bound by it. (*Supra*, p. 152.)

said C. D., ALL, &c. (*parcels*): TO HOLD the same unto the said C. D., in fee simple: TO THE USE that the said A. B. may henceforth during his life receive an annual sum or yearly rent-charge of £20, to be issuing out of the said hereditaments and premises, and to be paid by two equal half-yearly payments, on the —— day of ——, and the —— day of ——, in every year, the first of such half-yearly payments to be made on the —— day of —— next (*n*): And subject to the said annual sum or yearly rent-charge and the statutory powers and remedies for recovering and compelling payment thereof, TO THE USE of the said C. D., in fee simple: AND THE said C. D. hereby covenants with the said A. B. to pay to the said A. B. the said annual sum of £20, at the times and in the manner hereinbefore appointed for the payment thereof.

IN WITNESS, &c.

CONVEYANCE IN CONSIDERATION OF ANNUITY.

to purchaser,

to use that annuity be received by vendor for his life,

and, subject to annuity, to use of purchaser.

Covenant by purchaser to pay annuity.

No. CXXIII.

CONVEYANCE (*o*) *to a* PURCHASER *in* CONSIDERATION *of an* ANNUITY, *with fuller* POWERS *for* SECURING *it than in the last* PRECEDENT, *and with* POWER *for* PURCHASER *to buy a* GOVERNMENT ANNUITY *in* SUBSTITUTION (*p*).

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*purchaser*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WHEREAS the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described, in consideration of an annual sum or yearly rent-charge of £100, payable to the said A. B. for his life, and to be secured as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the annual sum or yearly rent-charge of

Parties.

Recite agreement for sale in consideration of annuity.

Witnessing part.

(*n*) See note (*p*), *supra*, p. 340.
(*o*) The stamp on this deed will be £6.
(*p*) See note (*m*), *supra*, p. 364.

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

£100, hereinafter limited and secured, the said A. B., as beneficial owner, hereby conveys unto the said E. F. and G. H. (hereinafter called "the trustees") ALL, &c. (*parcels, &c.*): TO HOLD the same unto the trustees in fee simple: TO THE USE that, &c. (*Limitation of rent-charge of £100 to A. B. for his life* (*q*)): AND SUBJECT TO the said annual sum or yearly rent-charge, and the statutory powers and remedies for recovering and compelling payment thereof, TO THE USE OF the trustees, for the term of one thousand years, computed from the day of the date of these presents, without impeachment of waste, upon the trusts hereinafter declared concerning the same: AND FROM AND AFTER the expiration or sooner determination of the said term of one thousand years, and in the meantime subject thereto and to the trusts thereof, TO THE USE of the said C. D., in fee simple: AND IT IS HEREBY AGREED AND DECLARED that the said hereditaments and premises are hereby limited to the trustees for the said term of one thousand years, UPON TRUST that if the said yearly rent-charge of £100, or any part thereof, shall at any time be unpaid for forty days after any of the times hereby appointed for payment thereof, then and so often as the same shall happen, the trustees shall, on the request in writing of the said A. B. or his assigns, enter into the possession or receipt of the rents and profits of the said hereditaments and premises, and let the same, or do and shall, on the like request, either mortgage or sell the said hereditaments and premises, or any of them, or any part thereof, for all or any part of the said term of one thousand years: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that upon any sale or mortgage of the premises or any part thereof under the foregoing trust in that behalf, the purchaser or mortgagee shall not be bound or concerned to see or inquire whether the case has happened in which such sale or mortgage ought to be made, or to regard any notice to the contrary: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the trustees shall stand possessed of all moneys to arise by any sale or mortgage made in pursuance of these presents, and of the rents and profits of the said premises, from the time of their entering into receipt thereof until the said premises shall be sold, UPON TRUST that they shall apply the same in payment to

Vendor conveys parcels.

To the use that vendor may receive rent-charge for his life,

and subject thereto to use of trustees for term,

with remainder to purchaser in fee.

Declaration of trusts of term.

Trusts of sale or mortgage moneys.

(*q*) See *supra*, p. 365.

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

the said A. B., or his assigns, of all arrears of the said yearly rent-charge of £100, and all costs, charges, and expenses to be incurred by the said A. B. or his assigns, by reason or on account of the non-payment of the said yearly rent-charge, or any part thereof, or otherwise relating thereto, and also all costs, charges, and expenses to be incurred by the trustees, in or about the execution of the trusts and powers of these presents, and shall invest the residue of the said moneys, in or upon any stocks, funds, or securities authorized by law as investments for trust money, in the names of the trustees, with power to vary such investments for others of the same or a like nature, and shall stand possessed of the moneys so to be invested, and the stocks, funds, and securities in or upon which the same shall be invested, upon trust, by and out of the income thereof, and if the income shall be insufficient, then, in addition thereto, by calling in and disposing from time to time of a sufficient part of the principal fund to pay unto the said A. B., or his assigns, the yearly rent-charge of £——, or so much thereof as shall from time to time be in arrear and unpaid, and all costs, charges, and expenses to be incurred by the said A. B., or his assigns, by reason or on account of the non-payment thereof, or otherwise relating thereto, and also all costs, charges, and expenses to be incurred by the trustees, in or about the execution of the trusts and powers of these presents, and subject to the trusts hereinbefore declared in trust for the said C. D. absolutely: And the said C. D. hereby covenants with the said A. B., that the said C. D., his heirs, executors, administrators, or assigns, will pay to the said A. B. the said annual sum or yearly rent-charge of £100, at the times and in the manner hereinbefore appointed for payment of the same, and also will, so long as the said yearly rent-charge shall remain charged on the messuage and buildings hereby conveyed, keep the same insured against loss or damage by fire in some public office of insurance, in a sum not less than two-thirds of the value thereof, and will on demand produce the policy or policies of insurance for the time being, and the receipts for the premiums in respect thereof, to the said A. B.: And it is hereby declared, that the power of appointing a new trustee or new trustees conferred by statute shall for the purposes of these presents be vested in the said

Covenant by purchaser to pay annuity,

and to insure against fire.

Power of appointing new trustees.

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

Power to purchaser to buy government annuity for vendor for life.

A. B.: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said C. D., his heirs or assigns, shall at any time during the life of the said A. B., purchase in the name of the said A. B., from the Commissioners for the Reduction of the National Debt, a government annuity of £100 for the life of the said A. B., so that the first half-yearly payment of such government annuity shall be made within six calendar months after the quarterly day of payment of the yearly rent-charge hereby secured last preceding the day of the purchase of such government annuity, and in case the said C. D., his heirs or assigns, shall, on the purchase of such government annuity, have paid up all arrears of the yearly rent-charge hereby created up to and including the last-mentioned quarterly day, and all costs, charges, and expenses due in respect of the same yearly rent-charge, then and in such case the said A. B. will accept the government annuity so to be purchased in lieu of and substitution for the said yearly rent-charge, and thereupon the said rent-charge, and the said term of one thousand years, and all the trusts and provisions herein declared and contained of and concerning the same shall cease.

IN WITNESS, &c.

No. CXXIV.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* CONSIDERATION *of an* ANNUITY PAYABLE *to the* VENDOR *and his* WIFE *successively for life and* SECURED *by the* PURCHASER'S BOND (*r*).

CONVEYANCE IN CONSIDERATION OF ANNUITY FOR LIVES OF VENDOR AND WIFE SUCCESSIVELY.

Parties.

Recite agreement for sale in consideration of annuity.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell the hereditaments hereinafter described to the said C. D., in consideration of an annuity of £100 to be paid to the said

Stamp.

(*r*) The stamp on this deed will be £6, and the stamp on the bond to secure the annuity will be 10*s*. (54 & 55 Vict. c. 39, s. 56 (41).)

A. B. during his life, and after his death to E. B. his wife, if she shall survive him, during her life, and to be secured by the bond of the said C. D.: AND WHEREAS immediately before the execution of these presents the said C. D. has executed to the said A. B. his bond in a sufficient penalty, bearing even date with these presents, subject to a condition thereunder written for making void the same upon payment by the said C. D., his heirs, executors, or administrators, of an annuity of £100 to the said A. B. during his life, and after his decease to the said E. B., if she shall survive the said A. B., during her life, and to be paid half-yearly at the times therein mentioned; NOW THIS INDENTURE WITNESSETH, that in consideration of the annuity of £100, secured by the said bond as aforesaid, the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance of freeholds to C. D.*).

IN WITNESS, &c.

CONVEYANCE IN CONSIDERATION OF ANNUITY FOR LIVES OF VENDOR AND WIFE SUCCESSIVELY.

Bond to secure annuity.

Witnessing part.

Consideration.

Vendor conveys to purchaser in fee.

No. CXXV.

GRANT *on a* SALE *of* ANNUITY *to* GRANTEE *for his own Life, charged upon Lands of* GRANTOR, COVENANT *by* GRANTOR *to pay* ANNUITY (*s*).

GRANT OF ANNUITY FOR LIFE OF GRANTEE SECURED ON FREEHOLDS OF GRANTOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*grantor*), of the one part, and C. D. of, &c. (*grantee*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. an annuity of £80, for the life of the said C. D., and to be secured in manner hereinafter mentioned, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby grants unto the said C. D., ONE annuity or yearly

Parties.

Recite agreement for sale of annuity.

Witnesseth.

Consideration.

Grant of annuity for life of grantee.

(*s*) This deed must be stamped with an *ad valorem* conveyance stamp on the sum paid to A. B. by C. D., and must be registered under the 18 & 19 Vict. c. 15, s. 12. (See *supra*, p. 152.)

GRANT OF ANNUITY FOR LIFE OF GRANTEE SECURED ON FREEHOLDS OF GRANTOR.

rent of £80, during the life of the said C. D., to commence and be computed from the day of the date of these presents, and to be charged upon and issuing and payable out of the lands and hereditaments comprised in the schedule hereto, and to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on the —— day of —— next: And the said A. B. hereby covenants with the said C. D. that the said A. B., his heirs, executors, or administrators, will pay to the said C. D., during his life, the said annuity of £—— on the days and in the manner aforesaid (*t*).

Charged upon lands of grantor.

Covenant by grantor to pay annuity.

In witness, &c.

The Schedule above referred to.

No. CXXVI.

GRANT OF ANNUITY SECURED ON LIFE INTEREST IN STOCK.

VOLUNTARY GRANT (*u*) *of an* Annuity *for the* Joint Lives *of the* Grantor *and* Grantee, *secured by an* Assignment *of a* Life Interest *in* Stock.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*grantor*), of the one part, and C. D. of, &c. (the mother of the said A. B.) (*grantee*), of the other part (*Recite indenture under which A. B. is entitled to a life interest in a sum of £—— £2¾ per Cent. Consolidated Stock standing in the names of E. F. and G. H. as trustees*): And whereas the said A. B. hath agreed to grant and assign to the said C. D. an annuity of £40 during their joint lives charged upon the life interest of the said A. B. in the said trust fund in the manner

(*t*) The powers of distress and entry and the demise to trustees for a term to secure the annuity, which were formerly inserted in annuity deeds, are now unnecessary. (See Conveyancing Act, 1881, s. 44.)

(*u*) This deed must be stamped with 10*s*., but it need not be registered, as the annuity is solely secured upon personal estate. (See *supra*, p. 151.)

hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that the said A. B., in consideration of his natural love and affection for the said C. D., hereby grants and assigns unto the said C. D. ONE annuity of £40 during the joint lives of the said A. B. and C. D., to commence from the day of the date of these presents, and to be charged upon and issuing and payable out of the dividends, interest, and annual produce of the said sum of £—— £2¾ per Cent. Consolidated Stock now standing in the names of the said E. F. and G. H. in the books of the Governor and Company of the Bank of England as hereinbefore is mentioned, or the stocks, funds, and securities for the time being representing the same, to be paid by equal half-yearly payments, the first of such half-yearly payments to be made on the —— day of —— next: AND THE SAID A. B. hereby directs the said E. F. and G. H. and the survivor of them, or other the trustees or trustee for the time being of the said indenture of settlement to pay the said annuity out of the said dividends, interest, and annual produce in manner aforesaid: PROVIDED ALWAYS, that the grant of the said annuity shall not prevent or interfere with the exercise of the power contained in the said indenture of settlement of varying the investments of the trust funds, but such power may be exercised in all respects as if these presents had not been executed. PROVIDED ALSO that the interest, dividends, and annual produce hereinbefore charged with the said annuity shall be and remain the sole fund charged therewith, and the said A. B. shall not be personally liable for the payment thereof.

IN WITNESS, &c.

GRANT OF ANNUITY SECURED ON LIFE INTEREST IN STOCK.

Witnessing part.

Grant of annuity.

Direction to trustees to pay annuity.

Grant of annuity not to prejudice power of varying investments contained in settlement.

Income to be sole fund, and grantor not to be liable.

No. CXXVII.

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS (*x*).

ENFRANCHISEMENT OF COPYHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lord of the manor*), of the one part, and C. D. of

Parties.

(*x*) Where the enfranchisement is made otherwise than under the Copyhold Acts, the mines and minerals pass to the grantee.

ENFRANCHISEMENT OF COPYHOLDS.

&c. (*copyholder*), of the other part: WHEREAS the said A. B. is seised in fee simple of the manor of E., in the county of ——:

Admittance of copyholder.

AND WHEREAS, on the —— day of ——, the said C. D. was admitted tenant out of Court to the hereditaments hereinafter described, to hold to him, his heirs and assigns, at the will of the lord, according to the custom of the said manor, at and under the rents, fines, heriots, suits, and services therefor due and of right accustomed: AND WHEREAS the said A. B. hath agreed with the said C. D. for the enfranchisement of the hereditaments hereinafter described, for the sum of £——:

Agreement for enfranchisement.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby enfranchises and conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same, as freehold, freed and discharged from all rents, fines, heriots, suits, and services, and other incidents of copyhold tenure, unto and to the use of the said C. D. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. hereby grants unto the said C. D., ALL such commonage and right of common in, upon, and over the waste and commonable lands of the said manor of E., as the said C. D. held, enjoyed, or was entitled to in respect of and as appurtenant to the said hereditaments and premises hereby enfranchised, or any of them, in like manner as the said C. D., or his customary heirs, could have used or exercised the same if the said premises had not been enfranchised, To HOLD the same unto and to the use of the said C. D. in fee simple (*y*).

Consideration.

Lord enfranchises to tenant.

Grant by lord of commonable rights.

IN WITNESS, &c.

Lord cannot be required to give acknowledgment or undertaking.

(*y*) It is considered that the lord cannot be required to give an acknowledgment or undertaking as to the title deeds of the manor, and the want of it is not likely to be an inconvenience to the grantee, because on a sale by him the purchaser will have no right to inquire into the lord's title. (See Conveyancing Act, 1881, s. 3, sub-s. 3; *Re* Agg-Gardner, 25 Ch. D. 600.)

No. CXXVIII.

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS *by* TENANT FOR LIFE *of* MANOR *under* SETTLED LAND ACTS *with exception of* MINES *and* MINERALS. — ENFRANCHISEMENT BY TENANT FOR LIFE.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*tenant for life of manor*), of the first part, E. F. of, &c., and G. H. of, &c. (*trustees of settlement for purposes of Acts*), of the second part, and C. D. of, &c. (*copyholder*), of the third part: WHEREAS, &c. (*recital of settlement or will under which A. B. is tenant for life of manor, and E. F. and G. H. trustees for purposes of Acts*): AND WHEREAS, &c. (*admittance of C. D., supra*, p. 372): AND WHEREAS the said A. B. has agreed with the said C. D. for the enfranchisement of the said hereditaments, subject to such exceptions and reservations as are hereinafter expressed, for the sum of £ ——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said E. F. and G. H., as such trustees as aforesaid, paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B. in exercise of the power for this purpose given to him by the Settled Land Acts, and of all other powers (if any) him hereunto enabling, and as beneficial owner, doth hereby enfranchise and convey unto the said C. D., ALL, &c. (*parcels*), except and reserved as hereinafter is mentioned: TO HOLD the same as freehold, freed and discharged from all rents, fines, heriots, suits, and services, and other incidents of copyhold tenure, unto and to the use of the said C. D. in fee simple: AND IT IS HEREBY AGREED AND DECLARED that there shall be excepted and reserved out of the conveyance hereby made, all mines, &c. (*exception and reservation of mines and minerals with powers of working same, see Precedent No. CXI.*, p. 350): AND THIS INDENTURE, &c. (*grant by lord of commonable rights, supra*, p. 372): PROVIDED ALWAYS, that, &c. (*proviso qualifying statutory covenant for title, supra*, p. 277).

Parties.

Recital of settlement, &c.,

and agreement for enfranchisement.

Witnessing part.

Consideration.

Tenant for life enfranchises to tenant.

Parcels.

Exceptions and reservations of mines and minerals, and powers in relation thereto.

IN WITNESS, &c.

No. CXXIX.

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES.

DEED *of* ENFRANCHISEMENT *by* ECCLESIASTICAL COMMISSIONERS *of* COPYHOLDS *for lives.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the Ecclesiastical Commissioners for England, of the one part, and A. B. of, &c. (*copyholder*), of the other part:

Recite grant by copy of court roll to A. B. for lives.

WHEREAS at a court holden in and for the manor of ——, in the county of ——, the Dean and Chapter of the Cathedral Church of ——, at ——, lords of the said manor, granted unto the said A. B. (*parcels as described in Court Rolls*),

Order in Council transferring capitular estates to Ecclesiastical Commissioners.

TO HOLD the same unto the said A. B. and his heirs for and during the lives of ——, and the lives and life of the longest livers and liver of them, at and under the yearly rent of £——, and the heriots, suits, and services therefor due and of right accustomed, and the said A. B. was thereupon admitted tenant to the said premises:

Order in Council empowering Ecclesiastical Commissioners to dispose of property.

AND WHEREAS under or by virtue of the several Acts of Parliament relating to the Ecclesiastical Commissioners for England and an Order of her present Majesty in Council, dated the —— day of ——, and published in the London Gazette on the —— day of ——, ratifying a scheme of the Ecclesiastical Commissioners recited in the said order, ALL the manors, lands, tithes, tenements, and hereditaments which then belonged either in possession or reversion to the said Dean and Chapter (with certain exceptions not affecting the said manor of ——) became vested in the said Ecclesiastical Commissioners:

Agreement for enfranchisement and sale.

AND WHEREAS by an Order of her Majesty in Council, dated, &c., and published, &c. (*Recite Order in Council authorizing Ecclesiastical Commissioners to dispose of the property vested in them under previous order*): AND WHEREAS the said Ecclesiastical Commissioners have agreed with the said A. B. for the enfranchisement and sale to him of the hereditaments hereinafter described (being the hereditaments to which the said A. B. was admitted tenant on the —— day of —— as aforesaid), for the sum of £——: NOW THIS INDENTURE WITNESSETH, that

Consideration.

in pursuance of the said agreement, and in consideration of the sum of £——, paid by the said A. B. into the Bank of England, to the credit of the said Ecclesiastical Commissioners, as

appointed by them in that behalf (the receipt whereof is testified by the memorandum indorsed hereon, and the payment whereof the Ecclesiastical Commissioners hereby acknowledge), the said Ecclesiastical Commissioners as trustees hereby enfranchise and convey unto the said A. B. ALL, &c. (*parcels by reference to a schedule*), TO HOLD the same unto and to the use of the said A. B., in fee simple, as freehold, henceforth and for ever freed and discharged from all rents, heriots, fines, suits, services, and other incidents of copyhold tenure.

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES.

Ecclesiastical Commissioners enfranchise parcels, to use of copyholder in fee.

IN WITNESS whereof the said Ecclesiastical Commissioners have hereunto set their common seal the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

No. CXXX.

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS *for* LIVES *by the* RECTOR *of a* PARISH *with the consent of the* ECCLESIASTICAL COMMISSIONERS *and the* PATRON *under* 24 *&* 25 *Vict. c.* 105, *where the* CESTUIS QUE VIE *are the* TENANTS *on the* COURT ROLLS, *as* TRUSTEES *for the* BENEFICIAL *Owner* (*z*).

ENFRANCHISEMENT WHERE CESTUIS QUE VIE ARE TENANTS.

THIS INDENTURE, made the —— day of ——, BETWEEN the Reverend A. B. rector of ——, and as such rector lord of the manor of the rectory of ——, of the first part, the Ecclesiastical Commissioners for England of the second part, C. D. of, &c., the patron of the said rectory, of the third part, and E. F. of, &c. (*copyholder*), of the fourth part: WHEREAS at a court holden in and for the said manor on the —— day of ——,

Parties.

Recite grant of copyholds in reversion to

(*z*) See stat. 21 & 22 Vict. c. 57, conferring powers on ecclesiastical corporations, with certain exceptions, and with approval of Ecclesiastical Commissioners, and also with certain consents, to sell, &c.

ENFRANCHISEMENT WHERE CESTUIS QUE VIE ARE TENANTS.

a grantee for his own life in trust for equitable owner.

Further grant for lives in trust on death of two of the lives.

That the rector is the lord of the manor.

That Ecclesiastical Commissioners are satisfied that it is for the advantage of the rector to enfranchise.

That notice has been given to the bishop.

Agreement by rector with consent of Ecclesiastical Commissioners and patron to enfranchise.

18—, the lord of the said manor granted in reversion to L. M., of, &c., then aged, &c., the lands and hereditaments hereinafter described and intended to be hereby enfranchised and conveyed with their appurtenances, To hold the same unto the said L. M. for his life from and after the deaths, surrenders, or forfeitures of X. and Y. respectively, In trust nevertheless for the said E. F., his heirs and assigns, at and under the yearly rent of £——, and the heriots, suits, and services therefor due and of right accustomed: AND WHEREAS at a court holden in and for the said manor on the —— day of ——, 18—, the homage presented the deaths of the said X. and Y., and thereupon the lord of the said manor granted to N. O. of, &c., then aged, &c., and P. Q. of, &c., then aged, &c., the said lands and hereditaments, To hold the same unto the said N. O. and P. Q. from and after the death, surrender, or forfeiture of the said L. M. during their lives and the life of the longest liver of them, upon trust nevertheless for the said E. F., his heirs and assigns, at and under the said yearly rent of £——, and the heriots, suits, and services therefor due and of right accustomed: AND WHEREAS the said A. B., as the rector of ——, is now the lord of the manor of the rectory of ——, and the said C. D. is the patron of the said rectory: AND WHEREAS it has been made to appear to the satisfaction of the Ecclesiastical Commissioners for England that the lands and hereditaments hereinafter described may, to the permanent advantage of the estate or endowment belonging to such rectory, be enfranchised and sold for the sum and in manner hereinafter mentioned: AND WHEREAS three months' notice in writing of such proposed enfranchisement and sale has been given to the Right Reverend the Lord Bishop of ——, in whose diocese the said rectory is situate: AND WHEREAS under the powers enabling him in this behalf contained in the Act of Parliament passed, &c., and intituled, &c. (*a*), and of the several Acts therein referred to, the said A. B., with the approval of the said Ecclesiastical Commissioners testified as hereinafter is mentioned, and also with the consent and approval of the said C. D. as the patron of the said rectory, hath agreed with the said E. F. for the enfranchisement and sale of the lands and hereditaments hereinafter described for the sum of £——: NOW

(*a*) 24 & 25 Vict. c. 105.

ENFRANCHISEMENT WHERE CESTUIS QUE VIE ARE TENANTS.

THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf and in consideration of the sum of £——, paid by the said A. B. into the Bank of England, to the account of the Ecclesiastical Commissioners for England, by their direction (the receipt whereof is testified by the memorandum indorsed hereon, and the payment whereof the Ecclesiastical Commissioners hereby acknowledge), the said A. B. doth hereby, in pursuance and exercise of the power for this purpose contained in the said Act, and of all other powers (if any) enabling him in this behalf, and with the consent and approval of the said Ecclesiastical Commissioners (testified by their being parties to and executing these presents), and also with the consent and approval of the said C. D. as the patron of the said rectory, testified by his being a party to and executing these presents, enfranchise, and convey unto the said E. F., All, &c. (*parcels*): To hold the same unto the said E. F. in fee simple, To the use of the said L. M., N. O., and P. Q., for their respective lives in succession according to the order of their names in the several copyhold grants hereinbefore recited, Nevertheless in trust for the said E. F., his heirs and assigns, and to be surrendered or conveyed as he or they shall direct (*b*), And from and after the death of the last survivor of them the said L. M., N. O., and P. Q., To the use of the said E. F. in fee simple, to the intent that immediately upon the execution of these presents, the copyhold tenure of the said premises, and all rents, fines, heriots, suits, services, and rights incident thereto, may be extinguished: And the said A. B. hereby covenants with the said E. F. and his heirs, that the said A. B. hath not executed or done or knowingly been party or privy to any deed or thing whereby the hereditaments and premises hereby enfranchised and conveyed, or any part thereof, are, is, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby the said A. B. is in anywise hindered from enfranchising and conveying the said hereditaments and premises in manner aforesaid.

In witness, &c.

Consideration.

The rector,

with such consent and approval as aforesaid,

enfranchises parcels to grantee to use of *cestuis que vie* for their lives, in trust for the equitable owner; and after death of the survivor of *cestuis que vie*, to use of equitable owner in fee.

To the intent that copyhold tenancy be extinguished.

Covenant by rector against incumbrances.

(*b*) It will be observed, that under an enfranchisement taken in this form the legal estate will be vested in the old *cestuis que vie* during their lives, which legal estate will have to be got in by a separate deed.

No. CXXXI.

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES. (*Another Form.*)

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS *for* LIVES *under similar circumstances as last Precedent.* (*Another form.*)

Recite arrangement how enfranchisement should be carried into effect.

THIS INDENTURE (*same parties and recitals as in last Precedent*): AND WHEREAS it has been arranged that the said enfranchisement and sale shall be carried into effect in manner following (that is to say), that the said L. M., N. O., and P. Q. shall in the first place surrender the said hereditaments to the said A. B. as lord of the said manor, so as to extinguish the copyhold tenure thereof, and that thereupon the said A. B. shall grant the same hereditaments as freehold to the use of the said E. F., in fee simple, in the manner hereinafter expressed: AND WHEREAS in part pursuance of the said arrangement the said L. M., N. O., and P. Q. have by the direction of the said E. F., and before the execution of these presents, surrendered into the hands of the said A. B., as lord of the said manor out of Court, the hereditaments hereinafter described with their appurtenances, To the intent that the copyhold tenure thereof may be extinguished: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration, &c. (*as in last Precedent*), the said A. B. doth by these presents, in pursuance, &c., and with the consent, &c. (*as in last Precedent*), convey unto the said E. F. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple. (*Covenant by A. B. that he has done no act whereby he is prevented from conveying, supra*, p. 377.)

Surrender to lord that copyhold tenure may be extinguished.

Lord, with the consent of the Ecclesiastical Commissioners and patron, conveys parcels to purchaser.

IN WITNESS, &c.

No. CXXXII.

RELEASE *of an* EXECUTORY DEVISE *to the* OWNER *of the* FIRST ESTATE.

RELEASE OF EXECUTORY DEVISE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*releasor*), of the one part, and C. D. of, &c. (*releasee*), of the other part: WHEREAS G. H., late of, &c., made his will, dated, &c., and thereby devised all his lands and hereditaments, situate, &c., unto and to the use of the said C. D., his heirs and assigns for ever: but in case the said C. D. should die without leaving lawful issue living at his decease (*c*), then the said testator devised his estates, lands, and hereditaments unto and to the use of the said A. B., his heirs and assigns, for ever (*death of G. H., and probate of his will*): AND WHEREAS the said A. B. has agreed to sell all his interest in the said lands and hereditaments to the said C. D. for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby releases and confirms unto the said C. D. ALL the lands and hereditaments devised by the said will of the said G. H. to the uses and in manner aforesaid, TO HOLD the same unto and to the use of the said C. D., in fee simple; To the intent that he and they may hold, retain, and enjoy the same, free from the aforesaid executory devise or limitation over to the said A. B., and from all other claims and demands whatsoever of him the said A. B. in respect thereof.

Parties.

Recite will devising lands in fee, with executory devise over.

Agreement for sale.

Witnessing part.

Executory devisee releases lands to owner of first estate free from executory devise.

IN WITNESS, &c.

(*c*) In the Conveyancing Act, 1882, s. 10, it is provided, with respect to instruments coming into operation after the 31st December, 1882, that where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect.

Restriction on executory limitations.

No. CXXXIII.

GRANT OF AN EXECUTORY DEVISE TO A PURCHASER.

CONVEYANCE *of the* BENEFIT *of an* EXECUTORY DEVISE *to a* PURCHASER (*d*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS (*Recite will creating executory devise, and death of testator and probate of his will, supra*, p. 379):

Recite will creating executory devise.

Agreement for sale.

AND WHEREAS the said A. B. hath agreed to sell all his estate and interest under the said will in the hereditaments hereinafter described (which hereditaments form part of the real estate devised by the said will) to the said C. D. at the sum of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL the estate, right, and interest of him the said A. B., under or by virtue of the said recited will in and to the hereditaments hereinafter described, namely: ALL, &c. (*here describe parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple.

Vendor conveys all his estate and interest in the hereditaments under will.

IN WITNESS, &c.

Contingent estates.

(*d*) By the 6th section of the 8 & 9 Vict. c. 106, all contingent, executory and future interests in tenements or hereditaments of any tenure are disposable by deed.

Contingent remainders.

The 8th section of the same Act provides that a contingent remainder shall not be defeated by the forfeiture, surrender, or merger of the preceding estate of freehold; so that as to contingent remainders created before the passing of the 40 & 41 Vict. c. 33, its failure depends on the particular estate of freehold naturally determining during the contingency, or on the non-happening of the contingent event. But it is provided by the last-mentioned Act, that every contingent remainder created after the passing of that Act shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect as if it had originally been created as a springing or shifting use or executory devise or other executory limitation.

No. CXXXIV.

CONVEYANCE *of* FREEHOLDS *and* DECLARATION *of* TRUST *of* COPYHOLDS *which had been* PURCHASED *in the* NAME *of a* TRUSTEE *for a* COMPANY (*by* INDORSEMENT).

CONVEYANCE OF FREEHOLDS AND DECLARATION OF TRUST OF COPYHOLDS BY TRUSTEE.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. of the one part, and the —— Company of the other part: WHEREAS the freehold and copyhold hereditaments comprised in the within-written indenture were purchased by the said A. B. as agent for and on behalf of the said —— Company, and the within-mentioned purchase-money of £—— was paid by the said A. B. out of the proper moneys of the said —— Company: AND WHEREAS, at the request of the said —— Company, the said A. B. hath agreed to execute to the said —— Company such assurance of the said freehold hereditaments, and to execute such declaration of trust as to the said copyhold hereditaments, as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B., as trustee, hereby conveys unto the said —— Company ALL the freehold messuages, lands, hereditaments, and premises comprised in and conveyed by the within-written indenture, or expressed so to be: TO HOLD the same unto and to the use of the said —— Company, their successors and assigns for ever: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the aforesaid agreement, and in consideration of the premises, it is hereby declared that the said A. B., his heirs and assigns, shall henceforth stand seised of and interested in all the copyhold hereditaments and premises in the within-written indenture recited to have been surrendered to the use of the said A. B. as within is mentioned, IN TRUST for the said —— Company, their successors and assigns for ever (*e*).

Parties.

Recite purchase of freeholds and copyholds in the name of a trustee.

Agreement to execute assurance and declaration of trust.

Conveyance of freeholds to company.

Declaration of trust as to copyholds.

IN WITNESS, &c.

(*e*) The lord of a manor is not bound to admit a corporation as tenant, because by so doing he would lose the fines, &c. on descents. Hence, when a corporation buys copyholds, the legal estate must be taken in the name of a trustee.

No. CXXXV.

GRANT OF RIGHT OF WAY.

GRANT *of a* RIGHT *of* WAY (*f*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*grantor*), of the one part, and C. D. of, &c. (*grantee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*),

Grant of right of way,

the said A. B., as beneficial owner, hereby grants unto the said C. D., his heirs and assigns, that it shall be lawful for the said C. D., his heirs and assigns, as owner or owners for the time being of the piece of land, situate in the parish of ——, in the county of ——, delineated and coloured pink on the map drawn in the margin of these presents, and his and their tenants and servants, and all other persons authorized by him or them, from time to time, and at all times hereafter, at his and their will and pleasure, to pass and repass, with or without horses, carts and carriages of all descriptions, over and along a road leading from —— turnpike road to the said piece of land, through certain pieces of land of the said A. B., situate in the said parish, delineated and coloured green on the said map, and the course of which road is shown on the said map by a dotted line between the points marked A and B thereon: TO THE END AND INTENT, that the right of way hereby granted shall be for ever hereafter appurtenant to the said piece of land coloured pink on the said map for all purposes connected with the use, occupation and enjoyment of the said piece of land, and of the farm and lands of the said C. D. adjoining thereto, and accessible through the same by means of the same road: AND ALSO that it shall be lawful for the said C. D., his heirs and assigns, owner or owners for the time being as aforesaid, from time to time, and at all times hereafter, to repair and amend the said road, the right of way over which is hereinbefore granted, in order that the said road

to purchaser in fee.

Power to purchaser to repair road.

(*f*) Rights of way are either in gross or appurtenant. A right of way in gross cannot be assigned; a right of way appurtenant to any particular land must be connected with the use and enjoyment of that land, and cannot be granted for purposes wholly unconnected with it. (Ackroyd *v.* Smith, 19 L. J. C. P. 315. See also Thorpe *v.* Brumfitt, L. R. 8 Ch. 850.)

may be kept in good repair and condition, and that the same be at all times fit and proper for answering the purposes intended by these presents (*g*) PROVIDED ALWAYS, that if the said A. B., his heirs or assigns, owners of the land traversed by the said road, shall use the same, then and in such case he or they shall contribute a fair and reasonable proportion of the cost of keeping the same in repair, and if any difference shall arise as to the amount which ought to be so contributed, the same shall be referred to a single arbitrator [*or* two arbitrators, one to be appointed by each party] under and subject to the provisions of the Arbitration Act, 1889.

GRANT OF RIGHT OF WAY.

Vendor to contribute towards expense of repair if he uses same.

IN WITNESS, &c.

No. CXXXVI.

CONVEYANCE *of* FREEHOLD LAND *and a* RIGHT OF WAY *over* OTHER LAND.

OF FREEHOLDS AND RIGHT OF WAY OVER OTHER LAND.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby conveys unto the said C. D.: FIRST, ALL THAT &c. (*parcels*): AND, SECONDLY, FULL RIGHT and liberty for the said C. D., his heirs and assigns, owner or owners for the time being of the land hereinbefore described, and his and their tenants and servants, and all other persons authorized in that behalf by him or them, from time to time, and at all times hereafter at his and their will and pleasure, for all purposes connected with the use and enjoyment of the said land, to pass and repass, with or

Parties.

Consideration.

Vendor grants lands and right of way over other land, to purchaser in fee.

(*g*) The grantee of a right of way is under no obligation to repair the road; but if he wishes to use it, he must do so. (Per Coleridge, J., in Duncan *v.* Louch, 14 L. J. Q. B. 187.)

OF FREEHOLDS AND RIGHT OF WAY OVER OTHER LAND.

without horses, cattle, and other animals, carts, waggons, and carriages, in, along, and over the roadway now making in and through the piece of land situate, &c., formerly known as ——, and now known as ——, and the site and course of which roadway is shown in the plan endorsed on these presents, and therein coloured ——: To HOLD the same unto and to the use of the said C. D. in fee simple: AND IT IS HEREBY declared that the right of way hereinbefore granted shall be used and enjoyed by the said C. D., his heirs and assigns, in common with the said A. B., his heirs and assigns, and the expense of keeping the said road in repair shall be borne by the said C. D., his heirs and assigns, and the said A. B., his heirs and assigns, in equal moieties (*h*).

IN WITNESS, &c.

No. CXXXVII.

CONVEYANCE WITH RESERVATION OF RIGHT OF WAY.

CONVEYANCE *of a piece of* LAND *to the* USE *that* VENDOR *may have a* RIGHT OF WAY *over it, and subject thereto to the* USE *of* PURCHASER *in fee simple* (*i*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner,

Conveyance by vendor of land part of a field.

hereby conveys unto the said C. D., ALL that piece of land situate in the parish of ——, in the county of ——, being part of a field known as —— field, the whole of which field is delineated in the map drawn in the margin of these presents, the part thereof intended to be hereby conveyed being coloured pink on the said map, and the remainder thereof being coloured

(*h*) It seems desirable to state in the deed who is to keep the road in repair. This will, of course, depend on the parties who are to use it, and on what may happen under the circumstances to be the most convenient arrangement.

(*i*) See sect. 62 of the Conveyancing Act, 1881.

yellow on the said map: To HOLD the same unto the said C. D. in fee simple, To THE USE that the said A. B., his heirs and assigns, as owner or owners for the time being of the land coloured yellow in the said map, and his and their tenants and servants, and all other persons authorized by him or them, shall for ever hereafter have a right of way with or without horses, carts, and carriages, over the said land hereby conveyed by means of the road which traverses the said land, between the points marked A and B in the said map, he and they paying a fair proportion of the expense of keeping the said road in repair and subject to the said right of way, To THE USE of the said C. D. in fee simple.

CONVEYANCE WITH RESERVATION OF RIGHT OF WAY.

To use that vendor as owner of the remainder of the field may have right of way, and subject thereto to use of purchaser in fee.

IN WITNESS, &c.

No. CXXXVIII.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *who* COVENANTS NOT *to* BUILD *or to allow any* TREES *or* SHRUBS *to* EXCEED *a certain* HEIGHT.

OF FREEHOLDS TO PURCHASER WHO COVENANTS NOT TO BUILD, ETC.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell the hereditaments hereinafter described to the said C. D. in consideration of the sum of £——, and of the said C. D. entering into the covenants hereinafter on his part contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of, &c. (*the receipt, &c.*), and in consideration of the covenants on the part of the said C. D. hereinafter contained, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple: AND the said C. D. hereby covenants with the said A. B., as the owner of the land adjoining to the land hereby conveyed, his heirs and assigns, that the said C. D., his heirs or assigns, will not at any time hereafter erect or permit to be erected any

Parties.

Agreement for sale.

Consideration.

Vendor conveys hereditaments to purchaser in fee.

Covenant by purchaser not to build on the land or to allow trees, &c., to grow beyond certain height.

OF FREEHOLDS TO PURCHASER WHO COVENANTS NOT TO BUILD, ETC.

building or wall (*k*) on the said piece or parcel of land hereby conveyed, or any part thereof, and will not at any time hereafter permit any trees or shrubs for the time being growing in or upon the said piece or parcel of land to exceed ten feet in height from the ground, having regard always to the present level of the said piece or parcel of land, and will at all times, by cutting the same or otherwise, prevent such trees and shrubs from exceeding the aforesaid height.

IN WITNESS, &c.

No. CXXXIX.

OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

CONVEYANCE *of a* PLOT *of* LAND, *part of a* BUILDING ESTATE. RESTRICTIVE COVENANTS *by* PURCHASER *as to* BUILDINGS *and otherwise* (*l*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH that in consideration, &c., the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL that plot or parcel of land situate, &c., which, with the dimensions and abuttals thereof, is delineated and shown on the map drawn in the margin hereof and thereon coloured pink, which plot or parcel of land is part of a building estate known as the —— estate, TO HOLD the same unto and to the use of the said C. D. in fee simple: AND the said C. D. hereby covenants with the said A. B., his heirs and assigns, as owner or owners for the time being of the remainder of the said —— estate, of which the land hereby conveyed is part, that he the said C. D., his heirs and assigns, will not without the consent in writing of the said A. B., his heirs or assigns, erect upon the plot of land hereby conveyed any house or building which shall be nearer to the road in front of the same than is indicated by the line marked on the said map

Conveyance by vendor to purchaser.

Restrictive covenants by purchaser.

(*k*) See Bowes *v.* Law, L. R. 9 Eq. 636.
(*l*) See the observations on restrictive covenants at p. 193, *supra*.

"building line": AND ALSO (*insert any other restrictive covenants which may be agreed on*), [PROVIDED ALWAYS that if and whenever the said A. B., his heirs or assigns, shall sell a plot of land being a part but not the whole of the said estate then remaining vested in him or them, the right to enforce the said covenants in respect of the plot of land so sold shall not pass to the purchaser unless it shall be declared in the deed of conveyance that it is intended to pass thereby (*m*).]

OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

Proviso that benefit of covenant shall not pass to future purchasers of other plots, unless so declared in conveyance.

IN WITNESS, &c.

No. CXL.

CONVEYANCE *of a* PLOT *of* LAND *part of a* BUILDING ESTATE—MUTUAL COVENANTS *by* VENDOR *and* PURCHASER, *with respect to* BUILDING, &c., *on such* PLOT, *and on the* PLOTS SOLD *or intended to be sold to other purchasers.*

OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH that, in consideration, &c., the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT plot or parcel of land situate in the parish of ——, in the county of ——, containing —— or thereabouts, which, with the dimensions and abuttals thereof, is delineated and shown on the map drawn in the margin of these presents, and is thereon coloured pink, TO HOLD the same unto and to the use of the said C. D. in fee simple. (*Acknowledgment by A. B. of right of C. D. to production of documents of title mentioned in schedule, and undertaking by him for safe custody thereof, supra*, p. 217): AND WHEREAS the plot of land hereby conveyed is part of an estate of the said A. B.,

Parties.

Conveyance of plot of land to

purchaser in fee.

Recital that land is part of building estate,

(*m*) This proviso is suggested in order to prevent any question as to the devolution of the benefit of the covenants on purchasers of other plots. It is assumed in this case that it would be inconvenient that the vendor should deprive himself of the right to release or dispense with the covenant.

OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

divided into plots for building purposes, some of which plots have been sold and the others are intended to be sold as and when purchasers can be found, and the said building estate is delineated on the said map, the plot of land hereby conveyed being coloured pink thereon, and the remainder of the estate being coloured yellow thereon: AND WHEREAS all the said plots have been sold or are intended to be sold, subject to the conditions and with the privileges specified in the schedule to these presents, and all the conveyances which have been hitherto executed by the said A. B. to purchasers have contained covenants similar to those hereinafter contained: AND WHEREAS the parties hereto have agreed to enter into the following covenants:

and that plots are sold subject to and with conditions and privileges.

Mutual covenants that conditions and privileges shall be annexed to all the plots.

NOW THIS INDENTURE WITNESSETH THAT IT IS HEREBY MUTUALLY COVENANTED AND AGREED, by and between the parties hereto, that all the conditions and privileges specified and set forth in the schedule hereto shall be for ever annexed as well to the plot of land hereby conveyed as also to all other the plots of land part of the said building estate shown on the said map, so far as the same are applicable thereto respectively, and shall be for ever hereafter respectively observed and enjoyed by the owners for the time being of the said plots respectively, and be mutually enforceable by and against the said owners respectively, and that all future conveyances to be executed by the said A. B. of the plots of land not already sold and conveyed as aforesaid shall contain covenants for giving effect to the said conditions and privileges similar to those contained in these presents (*n*): AND IT IS HEREBY DECLARED that the foregoing covenants shall, both as regards the liability thereunder and the benefit thereof, run with the land with reference to which they are entered into so far as legally can be, but neither the said A. B., nor the said C. D., nor any present or future owner of any plot of land affected by such covenants shall be personally liable thereunder, after he has parted with the same plot of land.

But owner not to be personally liable after parting with land.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*n*) See the observations on restrictive covenants, *supra*, p. 193.

No. CXLI.

DEED *of* MUTUAL COVENANTS *by* PURCHASERS *of* LOTS *as to* BUILDINGS *and for* INDEMNITY *against a* RENT.

DEED OF MUTUAL COVENANTS BY PURCHASERS AS TO BUILDINGS, ETC.

THIS INDENTURE, made the —— day of ——, BETWEEN the several persons named and described in the schedule hereunder written, and whose hands and seals are hereunto subscribed and affixed (*purchasers*), of the first part, and A. B. of, &c. (*vendor*), of the second part: WHEREAS the said A. B., being seised in fee simple of a piece of freehold land situate, &c., which piece of land is delineated and coloured pink on the plan hereunto annexed, lately put up the said piece of land for sale by public auction in lots according to the said plan: AND WHEREAS it was one of the conditions of the said sale that the several purchasers should execute a deed of covenant for the observance of the several stipulations hereinafter expressed: AND WHEREAS some of the said lots were sold at the said auction, and the said A. B. intends to sell the remaining lots either by public auction or private contract, as opportunities occur, subject to the like stipulations: AND WHEREAS it is intended that as the several lots are sold and the purchases thereof respectively are completed, the names and descriptions of the several purchasers and the numbers of the lots purchased by them respectively shall be inserted in the schedule hereunder written, and that they shall respectively execute these presents opposite to their respective names in the said schedule. NOW THIS INDENTURE WITNESSETH that in consideration of the premises, each of the several persons parties hereto of the first part, as to the lot purchased by him and with intent to bind all persons in whom the same lot shall for the time being be vested, but so as not to be personally liable under this covenant after he has parted with the said lot, hereby covenants with the others of them and their respective heirs and assigns, and also as a separate covenant with the said A. B., his heirs and assigns, that they the said covenanting persons respectively and their respective heirs and assigns, shall and will observe and perform the several stipulations hereinafter expressed and set forth, so far as the same are

Recite that vendor had put up land for sale by auction.

Condition that purchasers should execute deed of covenant.

Some lots sold at auction, and intention of vendor to sell remaining lots.

Each purchaser covenants to observe stipulations hereinafter expressed.

DEED OF MUTUAL COVENANTS BY PURCHASERS AS TO BUILDINGS, ETC.

or ought to be observed and performed by them respectively (that is to say):

Houses erected on lots not to approach road nearer than particular distance.

1. All houses or buildings erected on the said lots shall be erected so that the general line of the frontages shall not approach nearer to the road than the distance indicated on the said plan by the dotted line thereon, marked "building line," which line is — feet from the centre of the said road, except that open porticoes to the hall doors of any of the said houses may project any distance not exceeding — feet, and any bow window to any of the said houses may project any distance not exceeding — feet from the said building line.

Trades of licensed victualler, &c., not to be carried on.

2. The trade or business of a licensed victualler, or seller of beer, wine, or spirits, shall not be carried on upon any of the said lots (except lot —), or at or upon any building to be erected thereon. (*Insert any other stipulations agreed on.*)

As to annual sum charged on lots.

3. The annual sum of £——, which is now charged upon the said lots, as well as on other property of the said A. B. under an indenture, dated, &c., shall be henceforth exclusively charged on lot —. And the owner or owners for the time being of that lot shall at all times keep indemnified the other lots, and the owners and occupiers thereof for the time being, from and against the said rent and all claims and demands on account thereof.

Stipulations to be binding on purchasers who have completed.

4. The above stipulations shall be binding on the several purchasers who have completed their purchases and executed these presents, notwithstanding that some of the lots affected thereby may for the time being remain unsold.

In witness whereof the parties hereto have hereunto set their hands and seals on the day and year first above written, or on the day and year set opposite to their respective signatures in the schedule hereto.

The Schedule above referred to.

Name and Description of Purchaser.	No. of Lot.	Signature.	Seal.	Date of Signature.	Witness.

No CXLII.

GENERAL DEED *of* MUTUAL COVENANTS *by* PURCHASERS *and* VENDOR *on the* SALE *of* BUILDING PLOTS (*o*).

DEED OF MUTUAL COVENANTS ON SALE OF BUILDING PLOTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the several persons named and described in the schedule hereunder written, and whose hands and seals are hereunto subscribed and affixed (*purchasers*), of the first part; and A. B. of, &c. (*vendor*), of the second part. WHEREAS the said A. B. being seised in fee simple of land in the parish of ——, in the county of ——, has laid out the same for sale in plots for building purposes according to the plan hereunto annexed, in which plan the plots are numbered 1 to — inclusive: AND WHEREAS some of the plots have been sold to the several persons parties hereto of the first part, and the said A. B. intends to sell the remaining plots as opportunities offer: AND WHEREAS the Nos. of the plots sold as aforesaid (such Nos. corresponding to those in the said plan) are set forth in the schedule hereunder written opposite to the names of the several purchasers thereof: AND WHEREAS upon the treaty for the said sales it was agreed that the said several purchasers and the said A. B. should enter into the covenants hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises each of them the said several persons parties hereto of the first part as to the plot of land purchased by him, and with intent to bind all persons in whom the same plot of land shall for the time being be vested, but so as not to be personally liable under

Recite that vendor has laid out land for sale in plots.

That some of plots have been sold, and intention of vendor to sell remainder.

Agreement that purchasers and vendor should enter into covenants.

Each purchaser and vendor mutually covenant to observe stipulations hereinafter expressed.

(*o*) Notice of this deed should be endorsed on one of the principal title deeds, so that any future purchaser from the vendor may have notice of it. In the absence of such notice he would not be affected by the covenants. On any future sale by the vendor of any plot of land affected by the covenants, the conveyance should be made expressly subject to them, thus:— "To hold the same unto and to the use of the (*purchaser*) in fee simple, subject, nevertheless, to and with the benefit of the covenants as to buildings and otherwise contained in an indenture, dated, &c., and made, &c. (*date and parties*), so far as the same affect the land hereby conveyed."

Notice to be endorsed on deed of covenant on sale of building plots.

DEED OF MUTUAL COVENANTS ON SALE OF BUILDING PLOTS.

this covenant after he has parted with the same plot of land, hereby covenants with the others of them and their respective heirs and assigns, and also as a separate covenant with the said A. B., his heirs and assigns: And the said A. B., as to the remaining plots of land shown on the said plan, and with intent to bind all persons in whom the said plots of land shall for the time being be vested, but so as not to be personally liable under this covenant after he has parted with the same plots of land respectively, hereby covenants with the parties hereto of the first part respectively and their respective heirs and assigns that they the said covenanting persons respectively and their respective heirs and assigns will henceforth observe and perform the stipulations hereinafter expressed so far as the same affect the plots of land respectively (that is to say): (*Set out stipulations in numbered paragraphs*).

In witness, &c.

The Schedule above referred to.

Name.	Address.	Quality.	No. of Plot.	Signature.	Seal.	Witness.

No. CXLIII.

DEED *of* CONVEYANCE *of a* PIECE *of* LAND *which had been unintentionally omitted in the Deed conveying the* BULK *of the* PROPERTY (*by Indorsement on Principal Conveyance*).

DEED OF CONFIRMATION.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*vendor*), of the one part, and the within-named C. D. (*purchaser*), of the other part: WHEREAS, prior to the execution of the within-written indenture, the said A. B. agreed to sell to the said C. D. as well the hereditaments hereinafter described, as also the hereditaments comprised in the said indenture, at the price of £——, but by an unintentional omission the hereditaments hereinafter described are not described or referred to in the said indenture, and for the purpose of rectifying and supplying such omission, the said A. B. hath agreed to execute this present deed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

Parties.

Recite omission of land, and agreement to execute present assurance.

Conveyance of land.

No. CXLIV.

RELEASE *of* RENT-CHARGE *in fee, and* BUILDING *and other* COVENANTS, *to the* OWNER *in fee of the* FREEHOLDS *out of which the rent* IS PAYABLE.

RELEASE OF RENT-CHARGE TO OWNER OF LAND.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part. (*Recite conveyance of land by A. B. to C. D. in fee subject to the limitation to A. B. of a yearly rent-charge of* £5, *and to covenants by C. D. as to building and otherwise, and*

Parties.

Recite grant of land in fee subject to yearly rent-charge.

RELEASE OF RENT-CHARGE TO OWNER OF LAND.

that C. D. has erected a dwelling-house on the land, see supra, p. 349): And whereas the said C. D. has agreed to purchase from the said A. B. such release as is hereinafter expressed, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys and releases unto the said C. D., in fee simple: The said yearly rent of £——, limited to the said A. B. in fee simple by the hereinbefore recited indenture, and all powers and remedies for recovering the same when in arrear, and all covenants and conditions contained in the said indenture and on the part of the said C. D., his heirs and assigns, to be observed and performed: To the end and intent that the said yearly rent shall henceforth merge and be extinguished in the freehold and inheritance of the hereditaments comprised in the said indenture, and that the said covenants and conditions shall cease and determine.

Agreement for release of yearly rent-charge.

Release of rent-charge to the owner in fee of land,

to the intent that same may merge in the inheritance.

In witness, &c.

No. CXLV.

CONVEYANCE OF FREEHOLDS CHARGED WITH ANNUITY.

CONVEYANCE *of* Freeholds Charged *with an* Annuity. *The* Annuitant Joins *to* Release *the* Property *from the* Charge (*p*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*annuitant*), of the second part, and E. F., of, &c. (*purchaser*), of the third part. Whereas, by an indenture dated the —— day of ——, and made between the said C. D. of the one part, and the said A. B. of the other part, in consideration of the sum of £—— to the said C. D. paid by the said A. B., and of the annual sum of £15 thereinafter limited and secured to the said C. D., the said C. D. conveyed the hereditaments hereinafter described

Recite conveyance of freeholds in consideration of gross sum and annuity to vendor.

(*p*) The succession duty which will become payable on the death of the annuitant will be a charge on the property, unless it is commuted and previously paid.

unto the said A. B. in fee simple, To the use that the said C. D. should thenceforth during his life receive the annual sum or yearly rent-charge of £15 to be issuing out of the said hereditaments, and to be paid as therein mentioned, and subject as aforesaid to the use of the said A. B. in fee simple: AND WHEREAS the said A. B. has agreed to sell to the said E. F. the hereditaments hereinafter described, at the price of £——: AND WHEREAS the said C. D. has consented to join in these presents for the purpose of releasing the said hereditaments from the said annual sum or yearly rent-charge as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, and the said C. D., as beneficial owner of the said annuity or yearly rent-charge, hereby releases unto the said E. F. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said E. F. in fee simple, freed and discharged from the said annuity or yearly rent-charge, and all powers and remedies for securing the same (*q*).

IN WITNESS, &c.

CONVEYANCE OF FREEHOLDS CHARGED WITH ANNUITY.

Agreement for sale by purchaser under above conveyance.

Annuitant agrees to release from annuity.

Consideration.

Vendor conveys, and annuitant releases the property, to the purchaser in fee discharged from annuity.

No. CXLVI.

SURRENDER *of a* LEASE *to the* LESSOR (*r*).

SURRENDER OF LEASE TO LESSOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*lessee*), of the one part, and C. D., of, &c. (*lessor*),

Parties.

(*q*) This form may be easily adapted to the case of a freehold piece of ground which has been sold to the vendor, subject to the payment of a perpetual fee farm rent.

(*r*) By the 3rd section of the 8 & 9 Vict. c. 106, it is provided that an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, shall be void *at law* unless made by deed. The section refers only to surrenders required to be in writing. Therefore, surrenders which take effect by operation of law are not within the Act.

Assignments of chattel interests in land, and surrenders required to be in writing, must be by deed to pass an interest at law.

SURRENDER OF LEASE TO LESSOR.

of the other part (*Recite lease for thirty years to A. B.*): AND WHEREAS the rent and covenants reserved by and contained in the hereinbefore recited indenture of lease, and on the part of the said lessee to be paid, observed, and performed, have been duly paid, observed, and performed by the said A. B. up to the date of these presents: AND WHEREAS the said C. D. hath agreed to purchase from the said A. B. a surrender of the said premises at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt &c.*), the said A. B., as beneficial owner, hereby surrenders unto the said C. D. ALL the hereditaments and premises comprised in and demised by the said indenture of lease: TO THE INTENT that the residue of the said term of thirty years created by the said indenture of lease, and all other the estate and interest of the said A. B. in the said premises under or by virtue of the said indenture, may be merged and extinguished in the reversion and inheritance of the same premises.

Recite lease and that rent has been paid to present time.

Agreement to surrender lease to lessor.

Surrender of premises to lessor,

to the intent that residue of lease shall merge in the inheritance.

IN WITNESS, &c.

No. CXLVII.

ASSIGNMENT OF GROWING CROPS.

ASSIGNMENT *of* GROWING CROPS *of* CORN *and* GRASS (*s*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the crops of corn and grass now growing on the pieces of land hereinafter described, and all the benefit and advantage thereof, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt &c.*), the said A. B., as beneficial owner, hereby grants and assigns unto the said C. D. ALL the crops of corn and grass which are now growing, arising, and being on the

Parties.

Agreement for sale.

Assignment of crops,

(*s*) This deed must be registered under the Bills of Sale Act, 1878, so as to be good against a trustee in bankruptcy and execution creditors. (41 Vict. c. 31, s. 4.)

several pieces or parcels of land hereinafter described, namely (*here describe the lands specifically*): TOGETHER WITH FULL LIBERTY for the said C. D. and the servants, labourers, and other persons employed by him for that purpose, either with or without horses, carts, and carriages, from time to time, and at any time or times during the ensuing months of —— and ——, between the hours of —— in the morning and —— in the evening of each day, of the said months respectively, excepting the Sundays which shall occur therein, to enter upon the said pieces or parcels of land respectively, or any part or parts thereof respectively, for the purpose of seeing the condition of the said crops, and for the purpose of reaping, mowing, and cutting the said crops of corn and grass respectively, and removing the same respectively, and also to do all such other acts and things as may be necessary or required for the purpose of obtaining the full benefit of these presents: TO HOLD the same unto and to the use of the said C. D., absolutely.

ASSIGNMENT OF GROWING CROPS.

with power to purchaser to enter on land to remove same.

To purchaser absolutely.

IN WITNESS, &c.

No. CXLVIII.

ASSIGNMENT *of a* BOND DEBT (*t*) *by indorsement on the bond.*

ASSIGNMENT OF BOND DEBT.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the sum of £800, as purchase-money, to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE principal sum of £1,000

Parties.

Assignment of bond debt.

(*t*) Notice must be given of the assignment to the debtor, and from the date of such notice the assignment is effectual to pass the legal right to the bond and all legal remedies thereunder. A power of attorney is therefore unnecessary. (See 36 & 37 Vict. c. 66, s. 25, sub-s. 6; also Walker *v.* Bradford Old Bank, 12 Q. B. D. 511.)

Legal right to chose in action passes on notice of assignment.

ASSIGNMENT OF BOND DEBT.

secured by the within-written bond, and the sum of £——, now due for arrears of interest thereon, and all interest henceforth to become due for the same, and also the said bond and the full benefit and advantage thereof: To HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D., that the said principal sum of £1,000 now remains owing on the said bond together with the sum of £——, for arrears of interest thereon.

Covenant by vendor that bond debt remains due.

IN WITNESS, &c.

No. CXLIX.

ASSIGNMENT *of a* JUDGMENT DEBT.

ASSIGNMENT OF JUDGMENT DEBT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. on the —— day of ——, obtained a judgment in the High Court of Justice (Queen's Bench Division), against E. F. of, &c., for the sum of £——, and costs: AND WHEREAS the said sum of £—— and costs still remain due on the security of the said judgment: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said judgment debt and costs at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL THAT the said sum of £——, and also the said costs secured by the said recited judgment, and all interest now due and hereafter to become due for the same: AND ALSO the said judgment, and the full benefit and advantage thereof, and of all other securities for the same sum, costs, and interest: To HOLD the same unto the said C. D. absolutely: AND the said A. B. hereby covenants with the said C. D. that the whole of the said sum of £—— remains owing on the said judgment.

Parties.

Recite judgment.

That debt is still owing.

Agreement for sale of debt.

Witnessing part.

Consideration.

Assignment of debt, &c.,

and full benefit of judgment to purchaser.

IN WITNESS, &c.

No. CL.

ASSIGNMENT *of* LETTERS PATENT (*u*).

ASSIGNMENT OF LETTERS PATENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part; WHEREAS, by letters patent dated the —— day of ——, 18—, and numbered ——, her present Majesty granted unto the said A. B. her especial licence, full power, sole privilege and authority to make, use, exercise, and vend an invention for "improvements in sewing machines," within the United Kingdom of Great Britain and Ireland and the Isle of Man during the term of fourteen years from the date of the said letters patent: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the benefit of the said invention and letters patent, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE said invention and letters patent, and the full benefit thereof, including the right of applying for an extension of the term granted thereby: TO HOLD the same unto the said C. D. absolutely.

Parties.

Recite grant of letters patent.

Agreement for sale of invention and letters patent.

Assignment of invention and letters patent,

to purchaser absolutely.

IN WITNESS, &c.

No. CLI.

GRANT *of an exclusive* LICENCE *to use a* PATENTED INVENTION *in consideration of a* ROYALTY.

LICENCE TO USE A PATENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*patentee*), of the one part, and C. D. of, &c. (*licensee*), of the other part (*Recite letters patent as in last Pre-*

Parties.

(*u*) See 46 & 47 Vict. c. 57. This assignment should be registered in the Patent Office. (Sect. 23.) The registration is effected by leaving the original, together with an attested copy on proper paper.

The Register of Patents should be searched before completion.

Assignment should be registered.

Search in register.

LICENCE TO USE A PATENT.

cedent): AND WHEREAS the said A. B. hath agreed to grant to the said C. D. an exclusive licence to use the said invention upon the terms hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the reservations and covenants on the part of the said C. D. hereinafter contained, the said A. B. (hereinafter called "the grantor") hereby grants unto the said C. D. (hereinafter called "the grantee"), THE SOLE and EXCLUSIVE licence and authority to use and exercise the said invention, under the said letters patent, in all parts of the United Kingdom and the Isle of Man: To HOLD the same unto the grantee during the residue now unexpired of the term granted by the said letters patent, and any extension of the said term: YIELDING AND PAYING to the grantor by way of royalty the sum of £—— for every sewing machine made by the grantee by virtue of this licence, to be paid quarterly on the 31st day of March, the 30th day of June, the 30th day of September, and the 31st day of December in every year during the continuance of this licence, the first payment to be made on the —— day of —— next: AND in case the total amount of the royalty in any year ending on the 31st day of December shall fall short of £——, then YIELDING AND PAYING to the grantor, on the 31st day of December of every or any year in which such deficiency shall happen, such sum of money as, with the amount of the said quarterly payments, will make up the sum of £——: AND the grantee hereby covenants with the grantor that the grantee will pay the royalties and sums of money hereinbefore reserved and made payable at the times and in manner aforesaid: AND ALSO will at all times keep a correct and particular account of all sewing machines made by him by virtue of this licence, and will at the end of every quarter furnish to the grantor a true and correct list and particular of the sewing machines made during the then preceding month, so as to show the amount of royalty payable under the foregoing reservation, and will also furnish to him all such information as shall be required in order to test the accuracy of the said list, and will (if required) verify the same by statutory declaration: AND ALSO will permit the grantor to enter into and upon any place where the sewing machines made under this licence shall for the time being be kept in order to inspect the same: PROVIDED

Agreement for grant of licence.

Consideration.

Patentee grants licence to use and exercise invention,

at a royalty for every article made under the licence.

And if the royalty falls short of a specified annual sum, a further sum to make up the deficiency at the end of the year.

Covenants by licensee to pay royalties;

to keep accounts of articles constructed under licence;

to permit grantor to inspect stock.

Proviso for avoiding the

ALWAYS, that if default shall be made in payment of any royalty or sum of money payable under the foregoing reservations for the space of thirty days after the time hereby appointed for such payment, or if there shall be any breach committed of the grantee's covenants hereinbefore contained, then and in either of such cases the grantor may, by notice in writing given to the grantee, or left for him at his usual or last known place of abode in England or Wales, declare the licence hereby granted to be void, and the same shall be void accordingly: AND the grantor hereby covenants with the grantee that the grantee, paying the royalties and sums of money hereinbefore reserved, and observing and performing the covenants hereinbefore on his part contained, shall at all times during the residue of the said term, or any extension of the said term, peaceably and quietly hold, exercise, and enjoy the licence hereby granted, without any lawful interruption or disturbance by the grantor or any other person; AND ALSO that the grantor will pay all duties and fees the payment of which is or shall be necessary for the maintenance of the said patent: AND ALSO that the grantor will not at any time during the continuance of this licence exercise or use or authorize others to exercise or use the said invention without the consent in writing of the grantee, first had and obtained: AND that if any infringement of the said patent materially prejudicing or damaging the business of the grantor carried on under this licence, shall be committed or threatened by any person or persons, then and in every such case the grantor will, at the request of the grantee, take such proceedings against the person or persons so infringing or threatening to infringe as aforesaid for the purpose of recovering damages, or for the purpose of restraining such infringement, as shall or may be reasonably required, he the grantee hereby agreeing to assist the grantor in taking such proceedings as aforesaid, and in maintaining the said patent: PROVIDED ALWAYS, that if any question shall arise between the grantor and the grantee as to whether or not the grantor can properly be required to take any or what proceedings against any person or persons under the foregoing covenant, the same shall be referred to arbitration under the provision in that behalf hereinafter contained: AND the grantor hereby further covenants with the grantee that if during the continuance of this licence, the grantor shall make or discover

LICENCE TO USE A PATENT.

licence on non-payment of royalty or breach of covenants.

Covenant by grantor for quiet enjoyment by licensee;

not to exercise patent privilege, or authorize others to do so without the consent of licensee;

to take proceedings at request of licensee against persons infringing patent;

and that licensee shall be entitled to benefit of all improvements.

LICENCE TO USE A PATENT.

any improvement in the said invention, or in the using of the same, or which can or may be applied to the said invention, or shall become the owner of any such improvement, then and in every such case, and whether such improvement shall be the subject of letters patent or not, the grantor will communicate the same to the grantee, who shall be entitled to use and practise such improvement during the continuance of the licence hereby granted, without paying any further or other sum of money or acknowledgment in respect thereof: AND IT IS HEREBY DECLARED that if any dispute or difference shall arise between the parties hereto touching or concerning the construction of these presents or any clause or matter herein contained, or the rights, duties, or liabilities of either party hereunder, then and in every such case the dispute or difference shall be referred to two arbitrators, one to be chosen by each party [*or* to a single arbitrator], under and subject to the provision of the Arbitration Act, 1889: AND IT IS ALSO DECLARED that the expressions "the grantor" and "the grantee" herein used include where the context allows, besides the said A. B. and C. D., all persons deriving title under them respectively.

Arbitration clause.

Definition of terms.

IN WITNESS, &c.

No. CLII.

ASSIGNMENT OF GOODWILL AND TRADE MARK.

ASSIGNMENT *of the* GOODWILL *and* PROPERTY *of a* BUSINESS (*x*), *including a* TRADE MARK (*y*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath for

Recite that vendor carries on business,

(*x*) Under this deed the purchaser will be entitled to use the name of the vendor for the purpose of showing that the business was that formerly carried on by him, but he must not exercise that right so as to expose the vendor to liability. (Thynne *v.* Shove, 45 C. D. 577.)

(*y*) A registered trade mark may be assigned only in connection with the goodwill of the business (46 & 47 Vict. c. 57, s. 70). This assignment should be registered at the Patent Office, sect. 78.

ASSIGNMENT OF GOODWILL AND TRADE MARK.

some years past carried on the trade or business of ——, at ——, and he is the registered proprietor in connection with the said business of a trade mark No. ——, in the Register of Trade Marks for goods in classes —— of the third schedule to the Trade Mark Rules, 1890: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. all his interest and goodwill in the said trade or business, together with the said trade mark and the book and other debts intended to be hereby assigned, at the price of £—— (z), and upon the terms hereinafter expressed: AND WHEREAS the said A. B. has delivered to the said C. D. the books of account and other books relating to the said business, and in the said books are set forth the amounts and particulars of the debts respectively due and owing to and from the said A. B., and also the particulars of the contracts and engagements to which he is liable in respect of the said trade or business: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £——, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the covenants hereinafter contained on the part of the said C. D., the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the interest and goodwill of the said A. B. in the said trade or business of ——, AND ALSO the said trade mark and all privileges incidental thereto; and also all the book and other debts now due and owing to the said A. B. on account of the said trade or business, and the benefit of all contracts and engagements entered into with the said A. B. in respect of the said trade or business; TO HOLD the same unto the said C. D. absolutely: And the said A. B. hereby irrevocably appoints the said C. D. his attorney for him and in his name or otherwise to sue for, recover, and receive, and give effectual discharges for the debts hereby assigned: AND (in addition to the covenants for title implied by law) THE SAID A. B. hereby covenants with the said C. D. as follows, namely, THAT THE SAID A. B. will not at any time hereafter, either by himself, or in connection with any other person or persons, carry on the

and is the registered owner of trade mark.

Agreement for sale of goodwill, &c.

Assignment of goodwill and trade mark, and

book and other debts due to the business,

and contracts,

to purchaser absolutely.

Covenants by vendor,

that he will not carry on business within a specified distance;

(z) The stock-in-trade, if included in the sale, should be paid for separately, and should be made over to the purchaser by delivery.

ASSIGNMENT OF GOODWILL AND TRADE MARK.

said trade or business of —— within —— miles of ——; and that the amount and particulars of the debts respectively due and owing to and from the said A. B. on account of the said trade or business, and the particulars of the contracts and engagements to which he is liable in respect of the said trade or business are correctly stated and set forth in the books of account and other books so as aforesaid delivered by the said A. B. to the said C. D., and that the said A. B. will pay all the sums (if any) which may now be due and owing from the said trade or business in excess of the amounts which, by the said books, appear to be so due and owing: AND ALSO that the said A. B. will, from time to time, and at all times hereafter, use his best endeavours to promote the said trade or business, and to give to the said C. D. the full advantage of the connection and custom of the said A. B. in the said trade or business: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said C. D. hereby covenants with the said A. B., THAT the said C. D. will, from time to time, and at all times hereafter, keep indemnified the said A. B., and his estate and effects, from and against the several sums of money which by the said books appear to be due and owing from the said A. B. in respect of the said trade or business, and also from and against the contracts and engagements to which by the said books the said A. B. appears to be now liable, and also all interest, costs, expenses, losses, claims, and demands on account of the same debts, contracts, and engagements, respectively.

that books are correct,

and that vendor will pay all sums exceeding the amount appearing due by the books;

and that he will use his personal influence.

Covenant by purchaser to indemnify vendor against debts due from the business, and from contracts and engagements.

IN WITNESS, &c.

No. CLIII.

POLICY OF ASSURANCE.

ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE *to a* PURCHASER (*y*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*pur-*

(*y*) See 30 & 31 Vict. c. 144, and 54 & 55 Vict. c. 39, s. 118. A form of notice of an assignment of a policy will be found at the end of the mortgage precedents, p. 663, *infra*.

chaser), of the other part: WHEREAS by a policy of assurance under the hands of three of the directors of the —— Assurance Society, dated the —— day of ——, and numbered ——, the sum of £1,000 is assured to be paid to the executors, administrators, or assigns of the said A. B., within three calendar months after his decease, subject to the annual premium of £——: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said policy of assurance, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL THAT the hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys, benefits, and advantages to be had, recovered, or obtained under or by virtue of the said policy: TO HOLD the same unto the said C. D. absolutely, subject to the conditions as to payment of the future premiums and otherwise to be henceforth observed in respect of the said policy.

POLICY OF ASSURANCE.

Recite policy of assurance.

Agreement for sale.

Witnessing part.

Consideration.

Assignment by vendor of policy and premises,

to hold to purchaser absolutely.

IN WITNESS, &c.

No. CLIV.

CONVEYANCE *of an* ADVOWSON (*z*).

ADVOWSON.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c, (*pur-*

Parties.

(*z*) A vendor has no power to grant the next presentation during a vacancy (Baker *v.* Rogers, Cro. Eliz. 788), so that if a conveyance is executed of an advowson during a vacancy, the immediately pending right of presentation will not pass to the purchaser. (Grey *v.* Hesketh, Ambler, 268; Greenwood *v.* Bishop of London, 5 Taunt. 727.)

Grant of next presentation during vacancy invalid.

The owner of an advowson (including the purchaser of an estate for life in an advowson), being a clerk, may, on a vacancy, offer himself to the bishop, and the bishop cannot refuse him on that ground, but the grantee of the next presentation is precluded from so doing by 12 Anne, St. 2, c. 12. (Walsh *v.* Bishop of Lincoln, L. R. 10 C. P. 518.)

Purchaser of advowson may present himself.

The sale of an advowson or of a next presentation, the incumbent being *in extremis* at the time, is not invalid on that account. (Fox *v.* Bishop of Chester, 6 Bing. 1.) In Fox *v.* Bishop of Chester, it was expressly found by the jury that the purchase was made without the privity of the clerk who was afterwards presented, and without any intention to present him. It must not, however, be assumed from this, that the privity of the clerk or the intention to present him vitiates a purchase where the incumbent is

Sale of advowson or next presentation where incumbent is *in extremis*.

ADVOWSON.

Vendor grants advowson to purchaser.

chaser), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner,

in extremis, and not in other cases. When the clerk is privy to the contract in this sense, that it is part of the arrangement that he shall be presented, the transaction is simoniacal and void, whether the incumbent is *in extremis* or not. On the other hand, the mere intention on the part of a purchaser to present a particular person, provided that he is under no obligation to do so, does not, it is conceived, vitiate the purchase in either case.

Right of nomination when advowson is vested in trustee, &c.

If an advowson is vested in a trustee or mortgagee, the *cestui que trust* or mortgagor is entitled to nominate, and may compel the trustee or mortgagee to present his nominee.

If the incumbent dies after the date of a contract for the sale of an advowson the vendor must present the purchaser's nominee.

If the owner in fee of an advowson dies during a vacancy, the next presentation goes to his personal representatives. (Mirehouse *v.* Rennell, 8 Bing. 490.)

Bankrupt.

Where the owner or *cestui que trust* of an advowson is a bankrupt, the right of nomination may be exercised by him in respect of any vacancy occurring before the sale of the advowson or next presentation (Hill, 449);

Right of husband as tenant by curtesy.

and in the absence of a settlement, a husband during the coverture has the right of nomination in respect of an advowson vested in his wife, and after her death, in case there were issue of the marriage, and the husband survives, he will be entitled to present as tenant by the curtesy. (Hill, 450; 3 Cru. Dig. 14; Tud. R. P. 214.) When the advowson is separate estate of the wife, either under the Married Women's Property Acts or otherwise, her husband as such can acquire no right of nomination, except in the event of there having been issue of the marriage, and the

Right of widow.

wife dying without having disposed of the advowson in her life or by her will. If a widow is entitled to dower in respect of an advowson, the heir has the first two presentations and the widow the third.

Joint tenants and tenants in common.

If a right of presentation is vested in joint tenants or tenants in common they must concur in the presentation, in order to make it binding on the ordinary. If they present severally, the ordinary may admit either of the presentees or refuse all, and if no joint presentation is made within the six months he can present by lapse. (Co. Lit. 186 *a*.)

Coparceners.

In the case of coparceners the eldest may present on the first turn, and this right passes to her issue or to her assign. (Co. Lit. 186 *a*.)

Tenants in common when they cannot agree.

Where an advowson is vested in trustees in trust for tenants in common and the beneficiaries cannot agree as to the nomination, the Court will direct them to draw lots. (Johnstone *v.* Baker, 9 De G. M. & G. 439.) And it is conceived that the same course would be adopted in the case of joint tenants. In the case of coparceners, equity would follow the law and allow the eldest to nominate on the first turn.

Infant.

An infant, and not his guardian, is entitled to present to a church. (Heale *v.* Greenbank, 3 Atk. 710.)

Trustees.

If the right of nomination is vested in trustees, they cannot vote by proxy; and unless they have been incorporated by charter, they must all join in the presentation, if there is no clause authorizing a majority to bind the rest.

Parishioners, &c.

Where an advowson is vested in the parishioners or inhabitants of a place or in trustees for them, the majority of the parishioners or inhabitants may appoint. (Fearon *v.* Webb, 14 Ves. 13.)

Resignation of benefices.

As to engagements to resign benefices in favour of other persons, see 9 Geo. 4, c. 94, ss. 1—6.

hereby conveys unto the said C. D., ALL THAT the advowson and perpetual right of presentation of and to the rectory or parish church of ——, in the county of ——: TO HOLD the same unto and to the use of the said C. D., in fee simple. ADVOWSON.

IN WITNESS, &c.

No. CLV.

CONVEYANCE *of the next* PRESENTATION *to a* RECTORY; ABSOLUTE COVENANTS *for* TITLE, *the title not having been* INVESTIGATED. NEXT PRESENTATION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the next presentation intended to be hereby conveyed at the price of £——: AND WHEREAS, in order to save expense, it was agreed upon the treaty for the said purchase that the said C. D. should accept the title of the said A. B. without investigation, and that in consideration thereof the said A. B. should enter into an absolute covenant for title: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt, &c.*), the said A. B., hereby conveys unto the said C. D., THE NEXT PRESENTATION of and to the rectory or parish church of ——, in the county of ——, when the same shall become void by the death, resignation, or deprivation of ——, the present incumbent thereof, or otherwise howsoever: TO HOLD the same unto the said C. D. absolutely: AND the said A. B. hereby covenants with the said C. D. that he the said A. B. has good right to convey the said next presentation, and that the said C. D., his executors, administrators, or assigns, may present, by virtue of this conveyance, without any interruption from any person whomsoever: AND ALSO that the said A. B., and his heirs, and all other persons (if any) interested in the advowson of the said rectory,

Parties.

Agreement for sale of next presentation.

Consideration.

Vendor conneys next presentation

to purchaser.

Absolute covenants for title.

NEXT PRESENTATION.

will at all times hereafter, at the request and with the consent of the said C. D., his executors, administrators, or assigns, make, do, and execute, all such acts, deeds, and things, for further and more effectually assuring the said next presentation unto him or them, as he or they may require.

IN WITNESS, &c.

No. CLVI.

GRANT OF ADVOWSON AND ANNUITY UNTIL VACANCY.

CONVEYANCE *of an* ADVOWSON *and an* ANNUITY *until the* BENEFICE *becomes* VACANT (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. the advowson of the rectory or parish church of ——, intended to be hereby conveyed, and an annuity of £80 to be paid to the said C. D., his executors, administrators, or assigns, until the benefice shall become vacant, and to be secured by the bond of the said A. B., at the price of £2,000: AND WHEREAS in part pursuance of the said agreement the said A. B. has given and executed to the said C. D. his bond bearing even date with these presents, in the penal sum of £2,000, subject to a condition thereunder written for making void the same, if the said A. B., his heirs, executors, or administrators, shall pay to the said C. D., his executors, administrators, and assigns, the annual sum of £80 until the said benefice shall become vacant, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, the first of such half-yearly payments to be made on the —— day of —— next: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration, &c. (*Conveyance of advowson to C. D., as in Precedent No. CLIV., supra*, p. 405).

Parties.

Recite agreement for sale.

Bond of vendor to purchaser to secure annuity until benefice becomes vacant.

Conveyance of advowson.

IN WITNESS, &c.

(*a*) See *supra*, p. 405, note.

No. CLVII.

MERGER *of* RENT-CHARGES *in lieu of* TITHES (*b*).

MERGER OF RENT-CHARGE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, A. B. of, &c., and C. D. of, &c. (*proprietors of lands*), send greeting: WHEREAS, by an award made in pursuance of the Act for the Commutation of Tithes in England and Wales (*c*), and duly confirmed on the —— day of ——, the tithes of the parish of L., in the county of ——, were commuted, and a rent-charge of the annual sum of £5 was awarded to be paid to ——, of the parish of ——, in the said county of ——, yeoman, his heirs or assigns, or to the persons entitled in remainder or reversion after him, instead of the impropriate tithes arising from certain lands of the parish of L., of the estimated quantity, in statute measure, of 15A. 1R. 16P.: AND WHEREAS, by the instrument of apportionment of the rent-charge awarded to be paid in lieu of the tithes of the said parish of L., and also duly confirmed on the —— day of ——, the said rent-charge of £5 has been charged upon the lands particularly described in the said apportionment, and on the plan thereto annexed numbered respectively 1481, 1487, 1486, 1555, 1558, 1559, and 1570:

Parties.

Recite award.

(*b*) Under the 6 & 7 Wm. 4, c. 71, and the 1 & 2 Vict. c. 64, ss. 1, 3, a tenant in fee or in tail in possession of tithes, or commutation rent-charge in lieu of tithe, or any person having power to acquire a fee simple therein, or the tenant for life in possession of both lands and tithes, can, by deed or by declaration under hand and seal, to be approved by the commissioners (now the Board of Agriculture) and confirmed under their seal, merge the tithes, or commutation rent-charge, in the land out of or in respect of which they issue.

Merger of tithe rent-charges.

By the 1st section of 2 & 3 Vict. c. 62, all charges on tithes which are merged under the Acts are to have priority over any charges on the lands at the time of the merger.

The 6th section of 2 & 3 Vict. c. 62, authorizes the merger of the tithes of glebe land, where the glebe and the tithes belong to the same person in virtue of his benefice; and under the 19th section of 9 & 10 Vict. c. 73, all powers relating to the merger of tithes, or rent-charge instead thereof, may be executed by any person entitled in equity to the same, but so that all the charges on the tithes shall be prior and primary charges on the lands and the owners thereof for the time being.

To remove all doubts on the subject, it is enacted, by the 1 & 2 Vict. c. 64, s. 4, that the provisions of the Acts in relation to merger shall extend to copyholds.

(*c*) 6 & 7 Wm. 4, c. 71, ss. 67, 71.

MERGER OF RENT-CHARGE.

Seisin of lands by the different proprietors.

AND WHEREAS the said A. B. is seised for an estate in possession in fee simple of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the said lands numbered 1481, 1487, and 1486 respectively, and is seised in fee according to the custom of the manor of L., in the county of ——, of the same lands: AND WHEREAS the said C. D. is seised for an estate in possession in fee simple of the said lands numbered 1555, 1558, 1559, and 1570 respectively, and is also seised for an estate in fee simple in possession of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the last-mentioned lands: NOW THEREFORE we the said A. B. and C. D., according to our respective rights and interests therein, do hereby respectively declare it to be our will and intent, THAT THE SAID RENT-CHARGE of £5 shall henceforth be absolutely merged and extinguished in the freehold and inheritance of the lands in respect of which the said rent-charge was heretofore payable, and upon which it has been charged as aforesaid in and by the said instrument of apportionment. IN TESTIMONY whereof we have hereunto subscribed our names and affixed our seals, this —— day of ——, ——.

Merger by proprietors of rent-charge.

No. CLVIII.

SHARE IN RESIDUARY PERSONALTY.

ASSIGNMENT *of a* SHARE *in* RESIDUARY PERSONAL ESTATE *derived under a* WILL (*d*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*purchasers*), of the other part: WHEREAS G. H. late of, &c., made his will, dated the —— day of ——, and thereby, &c. (*recite residuary bequest under which vendor takes a moiety, and death of testator and probate of will*): AND WHEREAS the said C. D. and E. F. have agreed with the said A. B. for

Testamentary gift of residuary estate.

Agreement for purchase of vendor's share.

(*d*) Notice of this assignment should be given to the trustees of the will.

the absolute purchase of his share of and in the residuary personal estate of the said testator at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. in equal shares on or before the execution of these presents (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D. and E. F., ALL THAT the moiety or other the part or share of him the said A. B. under the said will of and in the residuary personal estate of the said testator, and the stocks, funds, and securities of which the same may consist, or by which the same respectively may be represented: To HOLD the same unto the said C. D. and E. F. absolutely, as tenants in common.

IN WITNESS, &c.

SHARE IN RESIDUARY PERSONALTY.

Consideration.

Vendor assigns his moiety of residuary estate to purchasers.

No. CLIX.

ASSIGNMENT *of a* LIFE INTEREST *in* STOCK (*e*).

LIFE INTEREST IN STOCK.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), it was declared and agreed that E. F. and G. H., their executors and administrators, should stand possessed of the sum of £250 Consolidated £3 per cent. Annuities, transferred into their names as therein mentioned, upon trust to pay to the said A. B. and his assigns the dividends and annual produce thereof for his life, and after his decease upon trust as therein mentioned: AND WHEREAS the said sum of £250 Consolidated £3 per cent. Annuities has been converted into a like amount of $2\frac{3}{4}$ per Cent. Consolidated Stock: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. his life interest in the said sum of £250 Consolidated Stock, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*),

Parties.

Recite settlement of stock,

for vendor for life.

Agreement for sale of life interest.

Witnessing part.

(*e*) Notice of this deed should be given to the trustees of the settlement.

LIFE INTEREST IN STOCK.

Assignment by vendor of life interest in stock to purchaser.

the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the dividends and annual produce to accrue and become payable during the life of the said A. B. from or in respect of the said sum of £250 Consolidated stock, now standing in the names of the said E. F. and G. H., as hereinbefore mentioned: TO HOLD the same unto the said C. D. absolutely.

IN WITNESS, &c.

No. CLX.

RELEASE BY A MARRIED WOMAN OF REVERSIONARY PERSONALTY.

ASSIGNMENT *by a* MARRIED WOMAN, *married before the 1st of January*, 1883, *of her* REVERSIONARY INTEREST *in* PERSONALTY *under a* WILL *made after the 31st of December*, 1857 (*f*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C., his wife (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS G. H., late of ——, &c., deceased, made his will, dated the —— day of ——, 1860, and thereby bequeathed the sum of £10,000 to his trustees therein named, upon trust to invest the same and vary the investments as therein mentioned, and to pay the annual income of the said trust moneys, stocks, funds, and securities unto L. M., for his life, and from and after his decease the said testator declared that the said trust moneys, stocks, funds, and securities, and the annual income thereof, should be divided between all the children of the said L. M. who should attain the age of twenty-one years in equal shares (*Death of G. H., and probate of his will*): AND WHEREAS the said L. M. has six children of whom the said C. B. is one, and the said C. B. and two others of the said children have attained the age of twenty-one years, and the three others are under that age and

Will bequeathing legacy to tenant for life.

Remainder to his children attaining twenty-one.

Vendor one of such children has attained twenty-one.

(*f*) This deed must be acknowledged by the married woman. (See 20 & 21 Vict. c. 57.)

unmarried: AND WHEREAS the said A. B. and C. his wife have agreed to sell to the said E. F. the reversionary share and interest of the said C. B. in the said sum of £10,000 so bequeathed as aforesaid, and the investments representing the same, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. his wife, as beneficial owners, do by the deed intended to be acknowledged by the said C. B. pursuant to the statute in that behalf, assign unto the said E. F. ALL the share and interest, shares and interests, as well vested as contingent, and as well original as accruing, expectant on the decease of the said L. M. to which the said C. B. or the said A. B. in her right is now or shall or may hereafter be entitled under the said will of the said G. H., deceased, of and in the said sum of £10,000 so bequeathed as aforesaid, and the investments representing the same, and the annual income thereof: TO HOLD the same unto the said E. F. absolutely.

RELEASE BY A MARRIED WOMAN OF REVERSIONARY PERSONALTY.

Agreement by vendor for sale of her expectant interest in legacy.

Assignment by vendor, with concurrence of her husband, of share of legacy expectant on decease of her father,

to purchaser absolutely.

IN WITNESS, &c.

No. CLXI.

RELEASE *of* PART *of* LANDS *charged with a* RENTCHARGE *with a view to a* SALE (*g*).

RELEASE OF PART OF LAND FROM RENT-CHARGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*releasor*), of the one part, and C. D. of, &c. (*releasee*), of the other part (*Recite indenture under which "the hereditaments described in the schedule hereto, with other hereditaments," are charged with a rent-charge payable to A. B., and, subject to such rent-charge, are vested in C. D. in fee*): AND WHEREAS all the hereditaments comprised in the hereinbefore recited indenture still remain vested in the said C. D.

Parties.

Recite that all the hereditaments subject to rent-charge remain vested in releasee.

(*g*) By the 22 & 23 Vict. c. 35, s. 10, it is provided that the release from a rent-charge of part of the hereditaments charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

Rent-charge may be released as to a part of the property.

RELEASE OF PART OF LAND FROM RENT-CHARGE.

in fee simple, as he doth hereby declare (*h*) : And whereas the said C. D., being about to sell the hereditaments described in the schedule hereto, has requested the said A. B. to release the same from the said yearly rent-charge of £—— limited to him by the hereinbefore recited indenture as aforesaid, which the said A. B. has agreed to do, being satisfied that the other hereditaments comprised in the same indenture are a sufficient security for the said rent-charge : NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. hereby releases all and singular the lands and hereditaments described in the schedule hereto from the said yearly rent-charge of £—— limited to the said A. B. by the hereinbefore recited indenture as aforesaid, and from all claims and demands whatsoever for or in respect of the same or any part thereof : Provided always, that the hereditaments comprised in the hereinbefore recited indenture other than the hereditaments hereby released, shall remain subject to the same yearly rent-charge, and the powers and remedies for enforcing payment thereof, as if these presents had not been executed.

Agreement to release.

Witnessing part.

Release of lands in schedule from rent-charge.

In witness, &c.

The Schedule above referred to.

(*h*) If the other lands charged with the rent-charge are vested in any other person than the vendor, it is apprehended that the release will be defective, because such other person would have a right to insist, notwithstanding the release, on a contribution (in case of his being called on to pay the whole) from the owner of the land expressed to be released.

No. CLXII.

DEMISE *of a* PORTION *of certain* LANDS *charged with an* ANNUITY *and with* GROSS SUMS *of* MONEY *to* TRUSTEES *for a* TERM OF YEARS *upon trust by way of* INDEMNITY *and* EXONERATION *of the* REMAINDER *of such lands from the payment thereof.*

DEMISE OF LANDS BY WAY OF INDEMNITY AGAINST RENT-CHARGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*owner*), of the one part, and C. D. of, &c., and E. F., of, &c. (*trustees*), of the other part: WHEREAS the said A. B. is seised in fee simple of the hereditaments described in the first and second schedules hereto subject to the following incumbrances (namely), (1) an annuity of £—— payable to —— during his life under an indenture dated, &c., and made, &c. (*date and parties*), and (2) a sum of £—— raiseable for the portions of the brothers and sisters of the said A. B. under the trusts of a term of —— years created by an indenture dated and made, &c. (*date and parties*): AND WHEREAS the said A. B. has agreed to sell some of the hereditaments comprised in the second schedule hereto, and intends shortly to sell the residue of the same hereditaments, and in order to facilitate such sales he is desirous of charging the said incumbrances exclusively on the hereditaments comprised in the first schedule hereto (which are of ample value) in exoneration of the hereditaments comprised in the said second schedule: NOW THIS INDENTURE WITNESSETH, that the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F., ALL the hereditaments mentioned and described in the first schedule hereto: TO HOLD the same unto the said C. D. and E. F., for the term of one thousand years, to be computed from the date of these presents, without impeachment of waste, upon the trusts following (that is to say), UPON TRUST and to the intent that the hereditaments hereby demised, and the rents and profits thereof, shall be at all times henceforth an indemnity to the hereditaments comprised in the second schedule hereto, and every part thereof, and to the several purchasers and proprietors thereof, and of every part thereof, from and against the said annuity of £—— and the said sum of £—— raiseable for portions as afore-

Parties.

That lands charged are comprised in schedules.

Demise of lands in first schedule to trustees for a term of years.

Upon trust to indemnify lands in second schedule from annual sum.

DEMISE OF LANDS BY WAY OF INDEMNITY AGAINST RENT-CHARGE.

said and the interest thereof, and all claims and demands in respect thereof; And upon trust that in case any claim or demand shall at any time hereafter be made for or on account of the said annuity and sum of £——, or any part thereof, upon or against the hereditaments comprised in the second schedule hereto, or any part thereof, or upon the owners or occupiers of the same, or any of them, then and in every such case the said C. D. and E. F., or the survivor of them, or other the trustees or trustee for the time being of the said term, shall out of the rents and profits of the hereditaments hereby demised, or any part thereof, or by selling, mortgaging, or leasing the same, for all or any part of the said term, or by any other reasonable ways or means, raise such sum or sums as shall or may be required for the purpose of paying and discharging the said annuity and sum of £——, or such part thereof as shall be claimed as aforesaid, and all costs, damages, and expenses, which may be sustained or incurred by reason of any such claim or demand as aforesaid, and all such other costs and expenses as may be incurred in the execution of the trusts and provisions of these presents, and shall apply the moneys to be so raised as aforesaid accordingly: And upon further trust that, subject and without prejudice to the trusts hereinbefore declared, the said trustees or trustee shall permit the rents and profits of the said hereditaments hereby demised, to be received by the said A. B., his heirs or assigns, or other the person or persons for the time being entitled to the same hereditaments in reversion immediately expectant on the said term of one thousand years: And it is hereby declared, that the power of appointing new trustees conferred by statute shall apply to these presents.

And for that purpose to raise money by sale or mortgage, or otherwise.

Statutory power to appoint new trustees to apply.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

No. CLXIII.

DECLARATION *of* TRUST *of a* SUM *of* STOCK *invested in the names of* TRUSTEES *by way of* INDEMNITY *against a* SUM *of* MONEY *charged on* LANDS *which have been* SOLD *to several* PURCHASERS.

DECLARATION OF TRUST OF STOCK BY WAY OF INDEMNITY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor of lands*), of the one part, and C. D. of, &c., and E. F. of, &c. (*trustees*), of the other part (*Recitals showing that under a settlement and disentailing assurance in the events which happened A. B. became absolutely seised in fee simple of lands subject to a sum of £—— charged thereon for the portions of his younger brothers and sisters*): AND WHEREAS the said A. B. has lately sold the hereditaments comprised in the said indenture of settlement to several persons, and the particulars of the said several sales and the names of the several purchasers are set forth in the schedule hereto; AND WHEREAS on the treaty for the said several sales it was stipulated and agreed that the sum of £—— should be invested by the said A. B. in the names of trustees, to be held by them upon the trusts hereinafter declared concerning the same: AND WHEREAS in pursuance of the said agreement the said A. B. has invested the sum of £—— in the purchase, in the names of the said C. D. and E. F., of the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, IT IS HEREBY AGREED AND DECLARED that the said C. D. and E. F. (hereinafter called "the trustees") shall stand possessed of the said sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock (hereinafter called "the said trust stock"), upon the trusts following (that is to say), UPON TRUST that the trustees shall, when and so soon as the said sum of £—— by the said indenture of settlement charged on the hereditaments therein comprised for portions as aforesaid, or any part or parts thereof, shall become payable, raise the same sum of £——, or such part or parts thereof as shall from time to time become payable and all interest (if any) which shall become due in respect thereof, by the sale of a competent part of the said trust

Parties.

Recite settlement, &c.

Sales of land comprised in settlement.

Agreement for indemnity.

Purchase of Consolidated Stock in the names of trustees.

Witnessing part.

Declaration of trust of Consolidated Stock.

Upon trust to apply same in payment of portions in exoneration of settled lands.

DECLARATION OF TRUST OF STOCK BY WAY OF INDEMNITY.

stock, and shall apply the moneys to be so raised as aforesaid accordingly, To THE END and intent that the hereditaments comprised in the said indenture of settlement, and the several purchasers of the same respectively, and all other persons for the time being entitled to or interested in the same, shall and may at all times hereafter be exonerated and discharged of and from the payment of the said sum of £—— charged on the said hereditaments for portions as aforesaid and every part thereof, and may be indemnified against the same sum and every part thereof, and all claims and demands for or in respect of the same, with and by means of the said trust stock, and the proceeds of the sale thereof, AND SUBJECT to the trust aforesaid, do and shall stand possessed of the said trust stock, IN TRUST for the said A. B. absolutely, and so that until the said sum of £—— shall become raiseable for portions as aforesaid, the dividends of the said trust stock, or of such part thereof as shall not for the time being have become saleable under the trust aforesaid, shall be paid to the said A. B.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLXIV.

ACKNOWLEDGMENTS AND UNDERTAKINGS.

ACKNOWLEDGMENT *of* RIGHT *to* PRODUCTION *of* DEEDS *and* UNDERTAKING *for* SAFE CUSTODY. (*Several forms adapted to the circumstances.*) (*i*).

By beneficial owner by separate writing.

1. (*Where the vendor is beneficial owner.*)

To X. Y. of, &c. (*purchaser*).

I, A. B. of, &c. (*vendor*), hereby acknowledge your right

(*i*) As a general rule, it is more convenient to insert the acknowledgment in the deed of conveyance, and there is now no objection to this, having regard to sect. 3, sub-sect. 3, of the Conveyancing Act, 1881, which precludes a purchaser from requiring the production of a document dated prior to the stipulated commencement of title, merely because it is

ACKNOWLEDGMENTS AND UNDERTAKINGS.

to production and delivery of copies of the documents mentioned in the schedule hereto, which documents relate to (among other property) a piece or parcel of land [*or* to divers lands and hereditaments] situate at, &c., conveyed to you by an indenture dated this —— day of ——, 18—. And I hereby undertake for the safe custody of the said documents.

As witness my hand this —— day of ——, 18—.

The Schedule above referred to.

By trustees.

2. (*Where vendors are trustees.*)

To X. Y. of, &c. (*purchaser*).

We, C. D. and E. F. (*trustees*), hereby acknowledge, &c. (*as in No.* 1, *omitting the undertaking for safe custody*).

By mortgagor and mortgagees.

3. (*Where the sale is made by a mortgagor with the concurrence of the mortgagees* (*k*).)

To X. Y. of, &c. (*purchaser*).

We, A. B., C. D., and E. F. (*mortgagees and mortgagor*), hereby acknowledge, &c. (*as in No.* 1). And I, the said E. F. (*mortgagor*), hereby undertake for the safe custody of the said documents.

The Schedule above referred to.

By different persons as to different deeds.

4. (*Where different persons give the acknowledgment as to different deeds.*)

To X. Y. of, &c. (*purchaser*).

I, A. B. of, &c., having in my possession the documents mentioned in the first part of the schedule hereto, And we, C. D. of, &c., and E. F. of, &c. (*trustees*), having in our possession the documents mentioned in the second part of the said schedule, And I, G. H. of, &c., having in my possession the documents mentioned in the third part of the said schedule, all which documents comprised in the first, second, and third parts of the said schedule relate, &c. (*as in No.* 1), hereby acknowledge your right to production and delivery of copies of the

covenanted to be produced or otherwise noticed in an abstracted deed. But there may be special circumstances rendering a separate instrument desirable. It need not be under seal, but it should have a 6*d.* agreement stamp.

(*k*) See p. 246, *supra*.

ACKNOWLEDGMENTS AND UNDERTAKINGS.

said documents respectively; And we, the said A. B. and G. H., hereby undertake for the safe custody of the documents mentioned in the first and third parts of the said schedule respectively.

As witness, &c.

The Schedule above referred to.

By largest purchaser to other purchaser.

5. (*Where upon a sale in lots the deeds have been delivered to one of the purchasers, who gives an acknowledgment, &c. to another purchaser* (*l*).)

To X. Y. of, &c. (*a purchaser*).

I, A. B. of, &c. (*largest purchaser*), having lately received from L. M. of, &c. (*vendor*), the documents mentioned in the schedule hereto, which documents relate to certain lands and hereditaments situate at, &c., purchased by me from the said L. M., and conveyed to me in fee simple by an indenture dated this —— day of ——, 18—, and also to certain land situate at ——, lately purchased by you from the said L. M., and conveyed to you in fee simple by an indenture dated, &c., do hereby acknowledge your right to production and delivery of copies of the said documents, and I hereby undertake for the safe custody thereof.

As witness, &c.

The Schedule above referred to.

By purchaser to vendor.

6. (*Where the deeds are handed over to a purchaser of the bulk of the property affected by them, he giving an acknowledgment, &c. to the vendor* (*m*).)

To X. Y. of, &c. (*vendor*).

I, A. B. of, &c. (*purchaser*), having received from you the documents mentioned in the schedule hereto, which documents relate to certain lands and hereditaments situate at, &c., conveyed by you to me in fee simple by an indenture dated this —— day of ——, 18—, and also to certain other lands and

(*l*) This is a common arrangement. But it is more convenient for the vendor to give the acknowledgment, &c. to every purchaser, retaining the documents for that purpose until all the purchases have been completed. The liability under the vendor's acknowledgment will pass to the largest purchaser when the documents are delivered to him.

(*m*) This is not an usual arrangement, as the vendor is entitled to retain the deeds, however small may be the property remaining unsold.

hereditaments which remain your property, do hereby acknowledge your right to production, &c. (*as in No. 5 to end*).

ACKNOWLEDGMENTS AND UNDERTAKINGS.

7. (*Where a purchaser gives a former purchaser with whom the vendor had entered into a covenant for production of deeds an acknowledgment and undertaking in substitution for the covenant*).

WHEREAS, by an indenture dated, &c., and made between E. F. of the one part, and C. D. of the other part, certain hereditaments, situate, &c., were conveyed by the said E. F. unto and to the use of the said C. D., his heirs and assigns for ever, and by an indenture bearing even date with the said indenture the said E. F. entered into a covenant with the said C. D. for the production of the documents comprised in the schedule hereto, subject nevertheless to a proviso that in case the said E. F., his heirs or assigns, should dispose of such of the hereditaments to which the said documents should relate, as had not been so sold to the said C. D. as aforesaid, and should deliver the same documents to such purchaser, and should thereupon procure such purchaser to enter into a covenant with the said C. D. similar to the covenant thereinbefore contained, then the said covenant should cease and become void: AND WHEREAS, by an indenture dated, &c., and made, &c., for the consideration therein mentioned, such of the said hereditaments as were not so sold to the said C. D. as aforesaid have been conveyed by the said E. F. unto and to the use of the said A. B. in fee simple: AND WHEREAS upon the treaty for the last-mentioned sale it was agreed that the said documents should be handed over to and held by the said A. B. as such purchaser as aforesaid, and that for the purpose of discharging the said E. F. from the obligation of the said covenant for that purpose contained in the said recited indenture of the —— day of ——, the said A. B. should give the acknowledgment and undertaking hereinafter contained: AND WHEREAS, in consequence of such arrangement, the said C. D. hath delivered up to the said E. F. the said indenture of covenant, dated the —— day of ——: NOW the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the documents mentioned in the schedule hereto, and he hereby undertakes for the safe custody thereof.

Parties.

Sale by original covenantor of part of hereditaments to which the deeds relate,

and contemporaneous deed of covenant by him for production of deeds, &c., with a proviso for determining covenant on purchaser of remaining hereditaments entering into similar covenant.

Sale by original covenantor of remainder of hereditaments.

Agreement by purchaser to give acknowledgment, &c.

Acknowledgment and undertaking by purchaser.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLXV.

STATUTORY DECLARATION AS TO IDENTITY.

STATUTORY DECLARATION *as to* IDENTITY *of* LANDS *contracted to be sold with* PROPERTY *to which a* TITLE *is shown.*

I, A. B. of, &c. (*declarant*), solemnly and sincerely declare as follows:—

That declarant knows the property.

1. I know the farm and lands situate in the parish of ——, known as —— Farm, particularly described in the schedule hereto and delineated in the plan hereto annexed, and which farm and lands have been contracted to be sold by C. D. of, &c., to E. F. of, &c.

Or,

I know the piece of land [*or* the house and garden] situate at ——, delineated and shown in the plan drawn in the margin of this declaration, and which, &c. (*as above*).

Possession of property by vendor and his predecessor in title.

2. The said farm and lands were formerly the property of F. D., the father of the said C. D., and were in his possession at the time of his death, which happened in the year 18—. On his death the same came into the possession of the said C. D., who has remained in possession or receipt of the rents and profits thereof up to this time.

Or,

The said piece of land is part of the land which was conveyed to F. D., the father of the said C. D., by an indenture dated the —— day of ——, 18—, by the following description, namely (*set out description verbatim*).

Or,

The site of the said house and garden is part of a piece of land which was conveyed, &c. (*as above*). The said F. D. built the house in the year 18—, and occupied the same as his residence with the said garden up to the time of his death, which happened on the —— day of ——, 18—. I have been shown an extract from his will, dated the —— day of ——, 18—, in the following words, namely, "I devise my house at —— to my son C. D.," and I say that the testator had not at the date of his will, or at the time of his death, any house at —— other than the house above described.

STATUTORY DECLARATION AS TO IDENTITY.

Sources of knowledge.

3. I am able to declare as above from having been the agent of the said C. D., and of his father, the said F. D., for the last —— years and upwards, during the whole of which time I collected the rents of the property [*or* from having been the tenant of the property under the said C. D. and the said F. D. for the last —— years and upwards, *or* from having lived in the parish of —— for the last —— years, and having been well acquainted during the whole of that time with the D. family]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

EXCHANGES AND PARTITIONS.

No. I.

EXCHANGE BY MUTUAL CONVEYANCES.

EXCHANGE *by* SEPARATE MUTUAL CONVEYANCES (*a*).

Parties.

Recital of agreement for exchange, and of conveyance to vendor of land in second schedule.

Witnessing part.

Conveyance of land in first schedule.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part: WHEREAS the said A. B. being seised in fee simple of the hereditaments comprised in the first schedule hereto, and the said C. D. being seised in fee simple of the hereditaments comprised in the second schedule hereto, have agreed to exchange the same: AND WHEREAS, in part performance of the said agreement, by an indenture bearing even date with these presents, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments comprised in the second schedule hereto have been conveyed by the said C. D. unto and to the use of the said A. B., in fee simple: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the aforesaid agreement, and in consideration of the premises (*Conveyance by A. B., as beneficial owner, of the hereditaments comprised in the first schedule hereto unto and to the use of C. D. in fee simple*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*a*) An exchange may be carried into effect either by one deed executed in duplicate or by two deeds. For an exchange by one deed, see the next Precedent. The stamp on this deed will be 10*s*.

No. II.

EXCHANGE *by* ONE *and the same* DEED *where* MONEY *is paid by* ONE *of the* EXCHANGING PARTIES *to the* OTHER *for* EQUALITY *of* EXCHANGE (*b*). EXCHANGE BY ONE DEED.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part, WITNESSETH, that in consideration of the conveyance by the said C. D. hereinafter contained, and of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents for equality of exchange (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the conveyance by the said A. B. hereinbefore contained, the said C. D., as beneficial owner, hereby conveys unto the said A. B., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said A. B. in fee simple.

Parties.

Mutual conveyances.

IN WITNESS, &c.

No. III.

CONVEYANCE *by way of* EXCHANGE *by a* TENANT *for* LIFE *with the* CONSENT *of his* MORTGAGEE, *under the* POWERS *of the* SETTLED LAND ACT, 1882. A SUM *is* PAID *to the* TRUSTEES *by way of* EQUALITY *of* EXCHANGE (*c*). EXCHANGE BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c.

Parties.

(*b*) The stamp on this deed will be an *ad valorem* as on a sale in respect of the sum paid for equality of exchange, if that sum exceeds £100, but if not, then a 10*s.* stamp. (54 & 55 Vict. c. 39, s. 73 and schedule under head "Exchange.")

(*c*) See the Settled Land Act, 1882, ss. 3, 20, 22.

EXCHANGE BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

(*mortgagee*), of the second part, L. M. of, &c., and N. O. of, &c. (*trustees*), of the third part, and X. Y. (*purchaser*), of the fourth part: WHEREAS, &c. (*recite settlement under which A. B. is tenant for life in possession, and L. M. and N. O. trustees for the purposes of the Settled Land Acts, supra, p.* 313, *mutatis mutandis*):

Recite settlement.

Mortgage by tenant of his life estate.

AND WHEREAS, by an indenture dated, &c., and made, &c., the life estate of the said A. B. in the settled hereditaments was conveyed by the said A. B. unto the said C. D. by way of mortgage for securing the payment by the said A. B. to the said C. D. of the sum of £500 and interest as therein mentioned:

Agreement for exchange.

AND WHEREAS, in exercise of the power for this purpose contained in the Settled Land Act, 1882, the said A. B. hath agreed to make an exchange with the said X. Y. of the hereditaments described in the first schedule hereto (being part of the settled hereditaments), for the hereditaments of the said X. Y. described in the second schedule hereto, and in consideration of the sum of £—— to be paid by the said X. Y. by way of equality of exchange:

Conveyance of land by deed of even date to uses of settlement.

AND WHEREAS by an indenture bearing even date with these presents, and made between the said X. Y. of the first part, the said A. B. of the second part, the said C. D. of the third part, and the said L. M. and N. O. of the fourth part, in consideration of the conveyance hereinafter contained on the part of the said A. B., &c., the hereditaments described in the second schedule hereto, have been conveyed by the said X. Y. by the direction of the said A. B. and with the consent of the said C. D. unto the said L. M. and N. O., in fee simple, To THE USES, upon the trusts and subject to the powers and provisions which, under the said indenture of settlement or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the hereditaments settled by the said indenture or as near thereto as circumstances will permit, but not so as to increase or multiply charges or powers of charging:

In consideration of conveyance of even date,

and of sum paid for equality of exchange.

Tenant for life with consent of mortgagee,

conveys

NOW THIS INDENTURE WITNESSETH, that in consideration of the hereinbefore recited conveyance by the said X. Y., and of the sum of £—— paid by him to the said L. M. and N. O. as such trustees as aforesaid, on or before the execution of these presents, the said A. B., in exercise of such power as aforesaid, and of all other powers (if any) him hereunto enabling, and as beneficial owner, doth hereby, with the consent of the said C. D., convey unto the

said X. Y., the hereditaments described in the first schedule hereto, To HOLD the same unto and to the use of the said X. Y., in fee simple: (*Proviso qualifying statutory covenants, supra, p.* 277): AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

EXCHANGE BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

parcels to purchaser in fee.

Acknowledgment by tenant for life of right of purchaser to production of indenture of settlement.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. IV.

DEED *of* PARTITION *of* FREEHOLD LANDS *by Three* CO-HEIRESSES, *one of whom pays a* SUM *by way of Equality of* PARTITION (*d*).

PARTITION BY CO-HEIRESSES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., spinster (*one daughter and co-heiress*), of the first part, C. D. of, &c., spinster (*another daughter and co-heiress*), of the second part, E. F. of, &c., spinster (*third daughter and co-heiress*), of the third part, and G. H. of, &c. (*grantee to uses*), of the fourth part (*Recite conveyance of property comprised in the schedules to M. N., and his death intestate, leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses*): AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the

Parties.

Recite conveyance to intestate, and his death, leaving co-heiresses.

Agreement for partition,

(*d*) A partition deed should be executed in as many parts as there are co-owners. Thus, in the above case, it should be executed in triplicate, and every part should be executed by all the parties, so as to be an original deed, and as such primary evidence. A counterpart as distinguished from a duplicate or triplicate original, is where each part is executed by one party only, and is primary evidence against that party, and secondary evidence against the other. (Taylor on Evidence, 301).

Difference between duplicate and counterpart deeds.

As to stamp, see 54 & 55 Vict. c. 39, s. 73, and schedule under head "Partition or Division." The stamp on this deed will be £1 in respect of the £200, paid for equality of partition.

Stamp.

PARTITION BY CO-HEIRESSES.

hereditaments comprised in the several schedules hereunder written, so that the entirety of the hereditaments comprised in the first schedule should be taken in severalty by the said A. B., and the entirety of the hereditaments comprised in the second schedule should be taken in severalty by the said C. D., and the entirety of the hereditaments comprised in the third schedule should be taken in severalty by the said E. F.: AND it was also agreed that the said E. F. should pay for equality of partition the sum of £200 to the said A. B. and C. D. in equal shares: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 to the said A. B. and C. D. in equal shares paid by the said E. F. on or before the execution of these presents (*the receipt whereof, &c.*), and in consideration of all the other premises, THE SAID A. B., C. D., and E. F., as to their several undivided third parts or shares, and as beneficial owners, hereby convey unto the said G. H., ALL the pieces or parcels of land and other hereditaments described and comprised in the first, second, and third schedules hereunder written, To HOLD the same unto the said G. H. in fee simple, To THE USES following (that is to say): AS TO the hereditaments comprised in the first schedule hereunder written, To the use of the said A. B., in fee simple: AS TO the hereditaments comprised in the second schedule hereunder written, To the use of the said C. D., in fee simple: AND AS TO the hereditaments comprised in the third schedule hereunder written, To the use of the said E. F., in fee simple.

and for payment of a sum for equality of partition.

Consideration.

Conveyance by co-heiresses of

hereditaments in first schedule to one co-heiress,

hereditaments in second schedule to another co-heiress, and hereditaments in third schedule to the third co-heiress.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

No. V.

DEED *of* PARTITION *of* LEASEHOLDS *between* THREE TENANTS IN COMMON. — PARTITION OF LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, 18—, Parties.
BETWEEN A. B. of, &c. (*one tenant in common*), of the first part, C. D. of, &c. (*another tenant in common*), of the second part, and E. F. of, &c. (*the remaining tenant in common*), of the third part (*recite lease of three houses Nos.* 1, 2, *and* 3 *Smith Street to A. B., C. D., and E. F. as tenants in common at a rent of* £12) : AND WHEREAS the parties hereto have agreed to make such partition of the said messuages and premises as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the assignments hereinafter made by the said E. F., the said A. B. and C. D., as beneficial owners, hereby assign unto the said E. F., ALL those the two several undivided third parts or shares of them the said A. B. and C. D. respectively, of and in the said messuage or tenement being No. 1 Smith Street aforesaid, with the outbuildings, yard, and garden thereto belonging (which messuage and premises are hereinafter referred to as the said premises No. 1) : TO HOLD the same unto the said E. F. to the intent that the said E. F., his executors, administrators, and assigns, shall be henceforth possessed of the said premises No. 1 for the residue now unexpired of the said term of —— years, and shall henceforth pay for and in respect of the said premises No. 1 the yearly rent of £4, being one third part of the said yearly rent of £12 reserved by the said indenture of lease, and shall observe and perform the covenants and conditions contained in the said indenture of lease and on the lessees part to be observed and performed so far as the same relate to the said premises No. 1 : AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the assignments hereinbefore and hereinafter made by the said C. D., the said A. B. and E. F., &c. (*assignment in similar form of two third parts of No.* 2 *to C. D.*) : AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the assignments hereinbefore made by the said A. B., the said C. D. and E. F., &c.

Recite lease and agreement for partition.

Witnessing part.

A. B. and C. D. assign their shares in premises No. 1 to E. F.

A. B. and E. F. assign their shares of premises No. 2 to C. D., and

C. D. and E. F. assign

PARTITION OF LEASEHOLDS.

(*assignment in similar form of two third parts of No.* 3 *to A. B.*):

their shares of premises No. 3 to A. B.

And it is hereby covenanted and declared between and by the parties hereto that each of them, his executors, administrators, and assigns, shall henceforth pay the rent hereinbefore made payable for or in respect of the premises taken by him under this partition, and shall observe and perform the covenants and conditions contained in the said indenture of lease and which henceforth ought to be observed and performed by the lessee for or in respect of the said premises, and shall keep indemnified the other parties hereto and their respective executors, administrators, and assigns, from and against the said rent, covenants, and conditions, and all actions, claims, and demands relating thereto.

Mutual covenants for indemnity as regards rent and covenants in lease.

IN WITNESS, &c.

No. VI.

PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

PARTITION *of* FREEHOLDS *and* COPYHOLDS *and* LEASEHOLDS *by* THREE PERSONS *who are interested in the* FREEHOLDS *and* COPYHOLDS *as coparceners, and in the* LEASEHOLDS *as* TENANTS IN COMMON. *A part of the* FREEHOLDS *and* COPYHOLDS *is allotted to each, and the* TWO LEASEHOLD HOUSES *are allotted equally to two out of the three* TENANTS IN COMMON *at an apportioned* RENT *in respect of each* HOUSE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one daughter*), of the first part, C. D. of, &c. (*another daughter*), of the second part, E. F. of, &c. (*the other daughter*), of the third part, and G. H. of, &c. (*grantee*), of the fourth part: WHEREAS L. M. late of, &c., being seised in fee simple of the freehold hereditaments comprised in the first, second, and third schedules hereunder written, and being seised, or entitled in customary fee simple of or to the copyhold hereditaments comprised in the fourth, fifth, and sixth schedules hereunder written, according to the custom of the manor of ——, of

Seisin of freeholds and copyholds by late owner,

PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

which the same are holden, died on the —— day of ——, intestate, leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses, him surviving: AND WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), the two messuages or dwelling-houses situate ——, and being respectively Nos. ——, were demised unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, as tenants in common for a term of fourteen years, at the yearly rent of £10, and subject to the covenants and conditions therein contained, and on the part of the lessees, to be observed and performed: AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the said freehold, copyhold, and leasehold hereditaments, so that the freehold and copyhold hereditaments comprised in the said first and fourth schedules respectively should be taken in severalty by the said A. B.; that the freehold and copyhold hereditaments comprised in the said second and fifth schedules respectively, and the said leasehold messuage and premises being No. ——, should be taken in severalty by the said C. D.; and the freehold and copyhold hereditaments comprised in the said third and sixth schedules respectively, and the said leasehold messuage and premises being No. ——, should be taken in severalty by the said E. F.; NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., C. D., and E. F., according to their several shares and interests, and as beneficial owners, do hereby convey unto the said G. H., ALL the messuages or tenements, lands and hereditaments, described and comprised in the first, second, and third schedules hereunder written: TO HOLD the same unto the said G. H., in fee simple, to the uses following, that is to say, AS TO THE hereditaments comprised in the said first schedule, To the use of the said A. B., in fee simple; AS TO THE hereditaments comprised in the said second schedule, To the use of the said C. D., in fee simple: AND AS TO THE hereditaments comprised in the said third schedule, To the use of the said E. F., in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, THE said C. D. and E. F., as beneficial owners, hereby covenant with the said A. B. that they the said C. D. and E. F. respectively,

and his death intestate, leaving his three daughters co-heiresses.

Lease of two messuages to three daughters as tenants in common.

Agreement for partition.

Conveyance of freeholds.

As to certain hereditaments to one daughter;

as to other hereditaments to another daughter.

Covenants by two daughters to surrender copyholds to other daughter.

PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

will, at the cost of the said A. B., forthwith surrender into the hands of the lord or lady of the said manor, ALL those the two undivided third parts or shares of the said C. D. and E. F. respectively of and in the copyhold hereditaments comprised in the fourth schedule hereunder written, To the use of the said A. B., in customary fee simple, at the will of the lord of the said manor according to the custom thereof, by and under the rents, suits, and services therefor due and of right accustomed (*Similar covenants by A. B. and E. F. with C. D. to surrender their shares in the copyhold hereditaments comprised in the fifth schedule to the use of C. D. and by A. B. and C. D. with E. F. to surrender their shares in the copyhold hereditaments comprised in the sixth schedule to the use of E. F.*): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and C. D., as beneficial owners, hereby assign unto the said E. F., ALL those the two undivided third parts or shares of the said A. B. and C. D. respectively, of and in ALL, &c. (*one of the messuages comprised in the indenture of lease*): TO HOLD the same unto the said E. F., for all the residue now unexpired of the said term of fourteen years, to the intent that the said E. F. may henceforth be possessed of the entirety of the said messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, being one moiety of the said rent of £10 reserved by the said recited indenture of lease, and to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed respectively, so far as the same relate to the said messuage and premises: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and E. F., as beneficial owners, hereby assign unto the said C. D., ALL those the two undivided third parts or shares of the said A. B. and E. F. respectively, of and in ALL, &c. (*the other of the messuages comprised in the indenture of lease*): TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of fourteen years, to the intent that the said C. D. may be henceforth possessed of the entirety of the last-mentioned messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, &c. (*as before*), AND THE SAID C. D. hereby covenants with the said A. B. and E. F., THAT the said

Assignment by two daughters of their shares in one leasehold messuage, to the other daughter at apportioned rent.

Assignment by two daughters of their shares in other leasehold house to the other daughter at apportioned rent.

Covenant by one daughter to pay rent

C. D., her executors, administrators, or assigns, will at all times hereafter during the said term of fourteen years granted by the said indenture of lease, pay the yearly rent of £5 in respect of the said messuage and premises No. ——, &c., and observe and perform the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee ought to be observed and performed, so far as the same relate to the same messuage and premises; and will at all times hereafter keep indemnified the said A. B. and E. F., and their estates and effects, from the payment of the said rent of £5, and the performance of the said covenants and conditions relating to the same messuage and premises, and from all claims and demands on account of the same (*Similar covenants by E. F. to pay rent and observe covenants in respect of the premises taken by her*).

PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

and observe covenants in respect of leasehold premises taken by her.

In witness, &c.

The Six Schedules will follow.

No. VII.

PARTITION *of* Freeholds *one* Moiety *whereof has been made the* Subject *of* Settlement, *and the* Tenant for Life *thereunder* Exercises *the* Powers *of* Partitioning *conferred by the* Settled Land Act, 1882.

PARTITION BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, G. O. of, &c. (*owner of the other undivided moiety*), of the third part, and J. K. of, &c. (*grantee to uses*), of the fourth part: Whereas by an indenture dated, &c., and made between L. M. of the one part, and N. O. of the other part, for the consideration therein mentioned, the hereditaments comprised in the first and second schedules hereto were conveyed by the said L. M. unto and to the use of the said N. O. in fee simple: And whereas the said N. O. died on the —— day of —— intestate, leaving the said A. B. then A. O. and G. O. his only children and co-heiresses-at-law: And whereas by an indenture dated the —— day of ——, and made between L. B. of the first part, the said A. B. then A. O. of the second part, and the said C. D. and E. F. (*trustees*), of the third part, being a settlement made in contemplation of the marriage which was shortly afterwards solemnized between the said

Parties.

Recite conveyance of hereditaments in first and second schedules to N. O.

Death of N. O. intestate.

A. B. and G. O. only children.

Settlement of A. B.'s share.

PARTITION BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

L. B. and the said A. B., the undivided moiety or equal half part of the said A. B. in the hereditaments comprised in the first and second schedules hereto was (with other hereditaments) conveyed by the said A. B. unto the said C. D. and E. F. and their heirs, To the use of the said A. B. in fee simple until the said intended marriage, and after the solemnization thereof, To the use of the said A. B. for her life for her separate use, and subject thereto To the uses therein declared concerning the same; and by the indenture now in recital the said C. D. and E. F. were empowered to sell the hereditaments thereby settled, or any part thereof, upon the request of the said A. B. during her life: AND WHEREAS the said A. B. and G. O. have agreed to make a partition of the hereditaments comprised in the first and second schedules hereto, and on the treaty for such partition it was agreed that the hereditaments comprised in the first schedule hereto should be taken in severalty by the said A. B. and her successors in title, and that the hereditaments comprised in the second schedule hereto should be taken in severalty by the said G. O., and that the sum of £100 should be paid by the said G. O. for equality of partition, to the said C. D. and E. F. as such trustees as aforesaid: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £100 to the said C. D. and E. F. as the trustees of the said indenture of settlement paid by the said G. O. on or before the execution of these presents by the direction of the said A. B., (the receipt whereof the said C. D. and E. F. hereby acknowledge,) the said A. B. as to the one undivided moiety comprised in the said indenture of settlement of and in the hereditaments intended to be hereby conveyed, in exercise of the power for this purpose vested in her by the Settled Land Act, 1882, and of all other powers (if any) her hereunto enabling, and as beneficial owner, hereby conveys, and the said G. O. as to the other undivided moiety of and in the said hereditaments and as beneficial owner, hereby also conveys unto the said J. K.: ALL the hereditaments described in the first and second schedules hereunder written, To HOLD the same unto the said J. K. in fee simple, To THE USES following, namely, AS TO the hereditaments comprised in the first schedule hereunder written: To the use of the said G. O. in fee simple: AND AS TO the hereditaments comprised in the second

To the use of herself for life for her separate use.

Power to the trustees to sell at request of tenant for life.

Agreement between A. B. and G. O. for partition.

Consideration.

£100 paid by G. O. to trustees of settlement.

A. B. as tenant for life in exercise of power of Settled Land Act as to one moiety,

and G. O. as to other moiety, convey to J. K.

As to hereditaments in first schedule:

To use of G. O.

As to hereditaments in second schedule:

schedule hereunder written: To the uses, upon the trusts, and subject to the powers and provisions which under the said indenture of settlement, or by reason of any power of charging therein contained, were immediately before the execution of these presents subsisting in the undivided moiety of the said hereditaments comprised in that indenture: (*Proviso qualifying A. B.'s statutory covenants, supra*, p. 277,) And the said A. B. hereby acknowledges the right of the said G. O. to production of the said indenture of settlement of the —— day of ——, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

PARTITION BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

To uses of the said indenture of settlement.

Acknowledgment by A. B. of G. O.'s right to production of said indenture of settlement, and undertaking for safe custody.

In witness, &c.

The First Schedule hereto.

The Second Schedule hereto.

No. VIII.

AGREEMENT *by two* Tenants *in* Common *for* Partition.

FOR PARTITION.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*one tenant in common*), of the one part, and C. D. of, &c. (*other tenant in common*), of the other part. Whereas the said parties hereto being seised of the hereditaments comprised in the two several schedules hereto as tenants in common in fee simple, have agreed to make partition thereof upon the terms hereinafter expressed. Now it is hereby agreed between the said parties hereto as follows:

Parties.

Recital of seisin.

I. The hereditaments comprised in the 1st schedule hereto shall, as from the —— day of —— next, be the property in severalty of the said A. B., and the hereditaments comprised in the 2nd schedule hereto shall, as from the same day, be the property in severalty of the said C. D.

Agreement for partition.

II. Inasmuch as the hereditaments comprised in the 1st schedule hereto are of greater value than the hereditaments comprised in the 2nd schedule hereto, the said A. B. shall pay to the said C. D. such a sum of money, by way of equality of partition, as shall be determined and awarded by E. F. of, &c., to whom the same is referred accordingly, with interest for the said sum, after the rate of £4 per cent. per annum, computed from the —— day of —— next, and the said reference shall be in conformity in all respects to the provisions as to arbitration contained in the Arbitration Act, 1889.

Money to be paid by one to the other for equality of partition.

III. When and so soon as the sum to be paid for equality of

FOR PARTITION.

partition shall be ascertained and paid, with interest thereon as aforesaid, the parties hereto shall respectively execute and do such assurance or assurances and things as shall be necessary for effecting the partition hereby agreed upon.

Parties to execute mutual assurances.

As to title deeds.

IV. THE documents of title which relate as well to the hereditaments comprised in the 1st schedule hereto, as also to the hereditaments comprised in the 2nd schedule hereto, shall be retained by the said A. B., and he shall give to the said C. D. an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody.

Costs.

V. ALL the costs and expenses of and incidental to this agreement, and the partition to be made in pursuance hereof, shall be paid by the said A. B. and C. D. in equal shares.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

EXCHANGES AND PARTITIONS UNDER THE GENERAL INCLOSURE ACTS.

Exchanges and partitions may be effected by order of Board of Agriculture.

In cases where it may be difficult to carry into effect an exchange or partition by private agreement, the same may be effected by an order of the Board of Agriculture under the provisions of the Inclosure Acts (8 & 9 Vict. c. 118, s. 147; 11 & 12 Vict. c. 99, s. 13; 52 & 53 Vict. c. 30, s. 2).

By whom application for exchange may be made.

An application for an order of exchange under these Acts may be made by the following persons, namely: (1) the persons in the actual possession or enjoyment, or receipt of the rents and profits, of any such land, except a tenant for life or for years holding under a lease or an agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises shall have been reserved, and except any tenant for years holding under any lease, or agreement for a lease, for a term which has not exceeded fourteen years from the commencement thereof, and except any tenant from year to year, or at will or sufferance; (2) where the land, &c., has been leased, or agreed to be leased, to any person for life or for years by a lease or agreement on which a rent of not less than two-thirds of the clear yearly value of the premises shall have been reserved, or where the land, &c., shall be in the possession of a tenant from year to year, or at will or sufferance, or shall have been leased or agreed to be leased for a term which shall not have exceeded fourteen years from the commencement thereof, then the person for the time being entitled to the land, &c., in reversion immediately expectant on the term created or agreed to be created by the lease or agreement for a lease, or subject to the tenancy from year to year or at will or sufferance; (3) where the land, &c., has been leased or agreed to be leased to any person for life or years by any lease or agreement for a lease on which a rent less than two-thirds of the clear yearly value shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person for the time being in the actual receipt of the rent reserved upon such lease or agreement for a lease jointly with the person liable to the payment of the rent; and (4) where any person shall be in possession or enjoyment, or receipt of the rents and profits of the land, &c., under any writ of execution, or as a receiver under any order of any court of equity, the person who, but for such writ or order, would have been in such possession, &c., jointly with the person in possession, &c.,

by virtue of such writ or order. (8 & 9 Vict. c. 118, ss. 16, 147; 11 & 12 Vict. c. 90, s. 13.)

Notices and advertisements before making order.

Before the order is confirmed, notice has to be given by advertisement in three successive weeks, and three calendar months must have elapsed from the publication of the last of such advertisements, during which three months any person entitled to any estate in, or charge on, the land may give notice of dissent, and the exchange will not be confirmed unless the dissent is withdrawn. (8 & 9 Vict. c. 118, s. 150.)

Provisions as to exchanges extended to partitions.

The above provisions as to exchanges are extended to partitions; but on an application for a partition, a lessee, being a person jointly interested, need not concur, and the provision as to notice of dissent does not apply where the application for a partition is made by two-thirds in value of the persons interested in the subject-matter of the partition. (11 & 12 Vict. c. 99, s. 13; 22 & 23 Vict. c. 43, ss. 10, 11.)

Mines may be excepted.

Exchanges may be made with an exception and reservation of mines and minerals and rights and easements for working them. (10 & 11 Vict. c. 111, s. 4.)

Exchanges and partitions of easements and other rights.

Exchanges and partitions may be made of rights of common, rights of fishing, manorial and other rights, and all easements over any land, and all quit rents, chief rents, heriots, tithes, and rent-charges for any other of such easements, rights, and things, and whether of the same or a like or different nature, or for land. (12 & 13 Vict. c. 83, s. 7.)

Where two or more persons interested, application may be made by two-thirds in value.

Where two or more persons are interested jointly, severally, as a class, or in common, the application of two-thirds in value of the persons so interested will be deemed the application of all persons interested. (*Ib.*)

A person holding lands by different titles may exchange them.

Any person interested in several subject-matters of exchange held under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, may effect exchanges of such several subject-matters of exchange in such and the same manner as if different persons had been interested therein. (*Ib.*, s. 11.)

A person holding several shares by different titles may make partition.

Any person interested in any land or other subject-matter of partition in undivided shares held under separate titles, or for distinct and separate interests, or subject to separate charges, may effect a partition of the same in such and the same manner as if different persons had been interested therein. (15 & 16 Vict. c. 79, s. 3.)

Persons interested in undivided parts or shares of any land or other subject-matter of partition, and also interested in the entirety of land or other subject-matter of exchange, may effect a partition and exchange at one and the same time. (15 & 16 Vict. c. 79, s. 32.)

Termor when to be deemed party interested for purpose of application.

Where any land has been leased for a term which shall have exceeded one hundred years from the commencement thereof, and it shall be shown to the satisfaction of the Board that no rent or acknowledgment has been paid or given for twenty years, or that the person entitled to the rent reserved upon such lease cannot upon reasonable inquiry be ascertained, the person in the actual possession of the land or in the actual receipt of the rents and profits as owner of such term is to be deemed the person interested within the meaning of the Acts. (17 & 18 Vict. c. 97, s. 4.)

Person in possession under agreement may apply.

Orders may be made on the application of parties in possession under any agreement for an exchange or partition. (*Ib.*, s. 5.)

Railway companies.

Railway and other public companies are persons interested within the meaning of the Acts. (20 & 21 Vict. c. 31, s. 4.)

Inequality of value may be compensated by rent-charge.

On exchanges or partitions inequality of value may be compensated by a perpetual rent-charge, where the deficiency in value does not exceed one eighth part of the whole value, (*Ib.*, ss. 6, 7, 8.)

Land taken in exchange or partition to go to same uses land given in exchange, &c.

Lands taken upon any exchange or allotted in partition under the Acts enure to the same uses and subject to the same conditions, charges, and incumbrances, as the land given in exchange or the undivided share in respect whereof the land is allotted would have stood limited or been subject to if the order for exchange or partition had not been made. (8 & 9 Vict. c. 118, s. 147; 11 & 12 Vict. c. 99, s. 13.)

ENLARGEMENT OF TERM DEEDS.

The Conveyancing Act, 1881, sect. 65, provides as follows:—

Enlargement of residue of long term into fee simple.

(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

And the Conveyancing Act, 1882, sect. 11, provides as follows:—

Section sixty-five of the Conveyancing Act 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not: but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

No. I.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a person* ABSOLUTELY ENTITLED *thereto* (*a*).

ENLARGEMENT OF TERM INTO FEE SIMPLE BY ABSOLUTE OWNER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., SENDS GREETING: WHEREAS by an indenture dated, &c., and made, &c. (*date and parties*), ALL, &c. (*parcels as in recited deed*), were demised unto the said —— his executors, administrators, and assigns, from the —— day of ——, for a term of 1,000 years thence next ensuing at a peppercorn rent: AND WHEREAS (after divers mesne assignments and acts in the law) by an indenture dated, &c., and made, &c. (*date and parties*), the said premises were assigned unto the said A. B. for the residue of the said term: NOW THE said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 1,000 years shall as to all the premises therein comprised be enlarged as from the date of these presents into a fee simple.

Recite demise for long term subject to nominal rent.

Enlargement by owner of term into fee simple.

IN WITNESS, &c.

(*a*) The stamp on this deed is 10*s*.

No. II.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* MORTGAGEE *who has become* ABSOLUTE OWNER *by* ADVERSE POSSESSION.

ENLARGEMENT OF TERM BY MORTGAGEE WHO HAS BECOME ABSOLUTE OWNER INTO FEE SIMPLE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., SENDS GREETING: WHEREAS by an indenture dated, &c., and made between L. M., of the one part, and the said A. B., of the other part, the lands and hereditaments situate

Recite mortgage for long term;

ENLARGEMENT OF TERM BY MORTGAGEE WHO HAS BECOME ABSOLUTE OWNER INTO FEE SIMPLE.

in the parish of ——, in the county of ——, therein particularly described, were demised by the said L. M. unto the said A. B., his executors, administrators, and assigns, for the term of 500 years thence next ensuing without impeachment of waste by way of mortgage for securing the payment by the said L. M. unto the said A. B. of the sum of £400 and interest as therein recited: AND WHEREAS no part of the said mortgage debt of £400 having been paid, the said A. B. entered into possession of the said premises in the year ——, and has ever since remained in uninterrupted possession and enjoyment thereof, without having acknowledged the title of the said L. M., or his right of redemption, and has consequently become the absolute owner of the premises for all the now unexpired residue of the said term of 500 years: NOW the said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the term of 500 years shall, as to all the premises therein comprised, be enlarged as from the date of these presents into a fee simple.

that mortgage debt was not paid,

and that mortgagee took possession and acquired absolute title to term by adverse possession.

Enlargement of the said term by mortgagee who has become absolute owner into fee simple.

IN WITNESS, &c.

No. III.

ENLARGEMENT OF TERM BY MARRIED WOMAN HAVING EQUITABLE ESTATE FOR LIFE FOR SEPARATE USE, ETC.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* MARRIED WOMAN *having an* EQUITABLE ESTATE *for* LIFE *for her* SEPARATE USE WITHOUT POWER *of* ANTICIPATION (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., the wife of C. B. of, &c., SENDS GREETING: (*Recite lease for* 700 *years*): AND WHEREAS N. O., late of, &c., having become entitled to the said premises for the unexpired residue of the said term, made his will dated the —— day of ——, 18—, and thereby gave all his real and personal estate to P. Q. and

Recite lease for 700 years.

Will by owner of term of all his property to trustees for daughter for life for sepa-

(*a*) This deed does not require acknowledgment by the married woman, or the concurrence of her husband.

R. S. upon trust for the testator's daughter, the said A. B., during her life, for her separate use without power of anticipation, and after her death in trust for the children of the said A. B., as therein mentioned, and the said testator appointed the said P. Q. and R. S. executors of his said will (*Recite death of testator and probate of the will*): NOW the said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 700 years, shall, as to all the premises therein comprised, be enlarged as from the date of these presents into a fee simple.

IN WITNESS, &c.

ENLARGEMENT OF TERM BY MARRIED WOMAN HAVING EQUITABLE ESTATE FOR LIFE FOR SEPARATE USE, ETC.

rate use without power of anticipation.

Enlargement by married woman entitled as above of the said term into fee simple.

No. IV.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by* HUSBAND AND WIFE (*b*).

ENLARGEMENT OF TERM INTO FEE SIMPLE BY HUSBAND AND WIFE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., and C., his wife, SEND GREETING (*recite creation of term for* 700 *years and other recitals showing that it became vested in C. B. before* 1883, *and that C. B. married before that date*): NOW the said A. B., and C., his wife, by virtue of the Conveyancing and Law of Property Act, 1881, s. 65, hereby declare that the said term of 700 years, shall, as to all the premises therein comprised, be enlarged as from the date of these presents into a fee simple.

Enlargement by husband and wife of long term into fee simple.

IN WITNESS, &c.

No. V.

DEED *to convert a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* TENANT FOR LIFE *of a* SETTLED ESTATE (*by* INDORSEMENT *on the* SETTLEMENT).

ENLARGEMENT OF TERM INTO FEE BY TENANT FOR LIFE OF SETTLED ESTATE.

KNOW ALL MEN BY THESE PRESENTS that I, the within-named A. B., being beneficially entitled under the

(*b*) This deed does not require acknowledgment by the married woman.

ENLARGEMENT OF TERM INTO FEE BY TENANT FOR LIFE OF SETTLED ESTATE.

within-written indenture to the possession of the lands and hereditaments comprised in the term of 1,000 years created by the within-recited indenture of the —— day of ——, 18—, and which lands and hereditaments were by the within-written indenture assigned unto the within-named E. F. and G. H. for the unexpired residue of the said term, Do by virtue of the Conveyancing and Law of Property Act, 1881, s. 65, hereby declare that the said term of 1,000 years shall, as to all the premises therein comprised, be enlarged as from the date of these presents, into a fee simple.

Enlargement by tenant for life of long term into fee simple.

In witness, &c.

No. VI.

CONVEYANCE OF LAND HELD FOR TERM SETTLED BY REFERENCE TO FREEHOLDS, AND ENLARGED TO USES OF FREEHOLDS.

CONVEYANCE *of* Land *held for a* Long Term *of* Years, *and* Settled *in trust by* Reference *to* Freehold Land, *and which* Term *has been* Enlarged *into a* Fee Simple *to the* Uses *of the* Freeholds.

THIS INDENTURE, made the —— day of ——, Between the within-named E. F. and G. H. (*trustees of the settlement*), of the one part, and I. K. of, &c. (*grantee to uses*), of the other part: WITNESSETH that, pursuant to the direction in this behalf contained in the Conveyancing and Law of Property Act, 1881, s. 65, the said E. F. and G. H., as trustees, hereby convey unto the said I. K., All the lands and hereditaments which by the within-written indenture were assigned unto the said E. F. and G. H. for the unexpired residue of a term of 1,000 years, and which term has been enlarged into a fee simple by the above-written deed poll dated the day before the date of these presents: To hold the same unto the said I. K. in fee simple, To the uses, upon the trusts, and with and subject to the powers and provisions by and in the within-written indenture declared and contained of and concerning the freehold hereditaments thereby settled, or such of them as are now subsisting and capable of taking effect.

Parties.

Pursuant to direction in Conveyancing Act.

Trustees of settlement convey parcels comprised in term which has been enlarged.

To uses of settled freeholds.

In witness, &c.

MORTGAGES.

Division of the subject.

It is proposed in this Dissertation to consider— I. The usual form of a mortgage of freehold, copyhold, and leasehold property respectively. II. Equitable mortgages by deposit of title deeds. III. The rights and remedies of mortgagor and mortgagee as regards redemption, foreclosure, and judicial sale, and the powers of a mortgagor in possession. IV. The rights and powers of a mortgagee as regards sale, insurance against fire, the appointment of a receiver and action on the covenant. V. The powers, duties, and liabilities of a mortgagee in possession. VI. The effect of the Statutes of Limitation as between mortgagor and mortgagee. VII. The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt. VIII. The rights and priorities of several mortgagees and incumbrancers amongst themselves, the protection afforded to purchasers and mortgagees against concealed trusts and incumbrances by the possession of the legal estate, the doctrine of tacking, notice actual and constructive, and the consequence of laches on the part of a mortgagee particularly in reference to the title deeds. IX. Some precautions to be observed by a person advancing money on mortgage. X. Transfers of mortgages and reconveyances. XI. Stamps on mortgages and deeds relating to mortgages.

I. *The usual form of a mortgage of freehold, copyhold, and leasehold property respectively.*

Ordinary form of mortgage of freeholds.

A mortgage is a conveyance of property to secure the payment of money or money's worth. Its ordinary

form is a conveyance by the mortgagor to the mortgagee, subject to a proviso or condition for a reconveyance on payment of the money intended to be secured on a day named, which is usually six months from the date of the deed. The conveyance is preceded or followed by covenants by the mortgagor with the mortgagee for payment of principal and interest on the appointed day, and if the principal is not paid on that day, for the future payment of interest half-yearly. Under the latter covenant arrears of interest can be sued for without requiring payment of the principal. If the property consists of houses or buildings, there should be a covenant for insurance against fire.

Ordinary form of mortgage of copyholds.

A mortgage of copyholds is usually effected by: (1) a deed whereby the mortgagor covenants to surrender the copyholds to the mortgagee, subject to a condition for making the surrender void on payment of principal and interest on a given day, which deed also contains covenants for payment of principal and interest, and for insurance (if necessary), similar to those in a mortgage of freeholds; and (2) a conditional surrender in accordance with the covenant in the deed. The mortgagee is seldom admitted, as that would involve the payment of a fine, and would render the mortgagee liable to the customary services; and it would also involve the necessity of a re-admission of the mortgagor on the mortgage being paid off. On the repayment of the mortgage-money, the mortgagee, if he has not been previously admitted, usually gives a warrant to the steward to vacate the surrender, and executes a release by deed to the mortgagor of the mortgaged property.

Ordinary form of mortgage of leaseholds.

Mortgages of leaseholds are made either by assignment for all the term and interest of the mortgagor, or by underlease for all the term except the last day or the last few days. The latter course should generally be adopted where the rent reserved by the lease is more than nominal, or the covenants are onerous; for if the mortgagee takes an assignment, a privity is established between him and the lessor, and he may

be sued for the rent or for a breach of any of the covenants.

Form of proviso for redemption.

The proviso for redemption should provide for the reconveyance of the property to the mortgagor, according to his former estate, or if the property is in settlement, to the uses subsisting under such settlement.

Effect of reservation of right of redemption to different uses.

If it is intended that on payment of the money the property shall be reconveyed to different uses, or so as to alter in some mode the rights and interests existing in it at the date of the mortgage, such an intention should be clearly expressed. A mere reservation of the right of redemption to uses differing from the prior uses, will not be sufficient if the difference is such as may be supposed to arise from inaccuracy or mistake (*a*). If, however, the difference is such as to show clearly an intention to alter the existing uses, such an intention will prevail. Thus, if on a mortgage by a tenant in fee the equity of redemption should be reserved to him and the heirs of his body, the land would, subject to the mortgage, revert to him in fee simple in the absence of an evident intention to resettle the estate (*b*). But in a case (*c*) where a tenant in tail under a will suffered a recovery to such uses as he should appoint by deed or will and subject thereto to the uses of the will, and afterwards made a mortgage of part of the estate in fee and limited the equity of redemption to the prior uses, and then joined in a transfer of the mortgage and reserved the equity of redemption to himself in fee, it was held that the equity of redemption did not revert to the old uses.

Reservation of equity of redemption of wife's lands.

Again, on a mortgage of a wife's lands to secure her husband's debt, if the equity of redemption is reserved to the husband and his heirs, without any further expression of intention to alter the previous rights, the equity of redemption will result to the wife, but if the mortgage should be for a term of years, and the proviso for redemption should direct that upon payment of the money the property should be reconveyed

(*a*) 1 Sug. Pow. 349, 350. Jackson, 16 Ves. 367.
(*b*) Per Lord Eldon, in Innes *v.* (*c*) Anson *v.* Lee, 4 Sim. 364.

to the husband or to uses other than to the wife, the equity of redemption would belong to the husband, or go according to the uses limited (*d*). In *Martin* v. *Mitchell* (*e*), the right of redemption was reserved to such uses as the husband and wife should appoint, and in default of appointment to the use of the wife in fee, and the Court doubted whether the wife's estate was altered. But it seems clear that a proviso for redemption in the form last mentioned, would now be deemed sufficient evidence of the wife's intention to enable her, with the concurrence of her husband, to deal with the property without an acknowledged deed (*f*).

Mortgages under powers.

The same principles apply to mortgages executed under powers where the right of redemption is reserved to uses different from those previously existing (*g*).

Provision for reducing rate of interest on punctual payment.

It is not unusual, with a view to secure the punctual payment of interest, to provide for its payment in the first instance, at a higher rate than is intended to be taken, with a proviso reducing it to the stipulated rate, in case of punctual payment on the proper half-yearly day, or within a short time (generally one month) thereafter. It would seem the more direct plan to make the interest payable, in the first instance, at the stipulated rate, and to provide for an increased rate in default of punctual payment. But such a provision would not answer the purpose, as it would be regarded in the light of a penalty and relieved against (*h*). It has been held that under the usual proviso reducing the rate of interest on punctual payment, a mortgagee in possession may charge the mortgagor with the higher rate, although he receives rent more than sufficient to pay the interest (*i*).

(*d*) Jackson *v.* Innes, 1 Bligh, 104, 136; Reeve *v.* Hicks, 2 Sim. & Stu. 403; Wood *v.* Wood, 7 Beav. 183; Stansfield *v.* Hallam, 29 L. J. (N. S.) Ch. 173; Lord Hastings *v.* Astley, 30 Beav. 269; Pigott *v.* Pigott, L. R. 4 Eq. 549; Jones *v.* Davies, 8 Ch. D. 205; *In re* Belton's Trust Estates, L. R. 12 Eq. 553.

(*e*) 2 Jac. & Walk. 413.

(*f*) Atkinson *v.* Smith, 3 De G. & J. 186.

(*g*) Whitbread *v.* Smith, 3 De G. M. & G. 727; Heather *v.* O'Neil, 2 De G. & J. 399.

(*h*) Nicholls *v.* Maynard, 3 Atk. 519.

(*i*) Union Bank *v.* Ingram, 16 C. D. 53; Bright *v.* Campbell, 41 C. D. 388.

Sometimes it is stipulated, particularly where the loan is one of a large amount, that the loan shall remain on the security for a term certain. This is usually effected by making the principal money payable, in the first instance, at the usual time, with provisions, first, that the mortgagee shall not call in the money before the end of the term agreed on, if the interest is punctually paid, and the mortgagor's covenants (if any) are duly performed in the meantime; and, secondly, that the mortgagor shall not be at liberty to pay off the money before the end of the term agreed on, unless the mortgagee shall be willing to receive it.

Provision for continuing loan for a term certain.

It has always been the practice to make the mortgagor enter into absolute covenants for title, and by virtue of the Conveyancing Act, 1881, the following covenant is now implied in every conveyance by way of mortgage where the mortgagor conveys, and is expressed to convey, as beneficial owner.

Covenants for title are in a mortgage absolute.

Statutory Covenant.

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy, or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those

For right to convey.

For quiet enjoyment.

Free from incumbrance.

And for further assurance.

subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

In case of leaseholds

And in the case of leasehold property, the following further covenant:—

that lease is valid.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agree-

To pay rent and perform covenants.

ments contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them.

Mortgage should contain covenant to insure, and to produce policy and receipts to mortgagee.

Having regard to the statutory provision as to insurance, a mortgage deed comprising buildings should as a general rule contain a covenant by the mortgagor to insure to the amount considered necessary, and to produce the policy and the receipt to the mortgagee on demand, but it is unnecessary to insert any further provision enabling the mortgagee to insure in case of the mortgagor's default, as this is provided for by statute (*l*).

Attornment clause, to what extent void under Bills of Sale Act.

It was formerly usual, when the mortgagor was in actual occupation of the mortgaged property, to make him attorn tenant to the mortgagee at a rent at least equal to the interest, so as to enable the latter to distrain for such interest as rent. It has been decided that an attornment clause contained in an unregistered deed is void under the Bills of Sale Act, 1878, so far as it gives power to distrain personal chattels (*m*), but so far as it creates the relation of landlord and tenant the clause is valid, and a mortgagee may under it obtain an order to enter judgment for the recovery of the land on the determination of the tenancy (*n*).

The subject of mortgages or charges by registered proprietors will be dealt with in a subsequent dissertation on "Registration of title and instruments relating to registered land."

(*l*) See p. 460, *infra*.

(*m*) *In re* Willis, 21 Q. B. D. 384, p. 153. Green *v.* Marsh, (1892) 2 Q. B. 330.

(*n*) Mumford *v.* Collins, 25 Q. B. D. 279.

II. *Equitable mortgages by deposit of title deeds.*

Equitable mortgage by deposit of deeds.

An equitable mortgage of land or other property may be created by an agreement in writing, or by a parol agreement accompanied or followed by a deposit of title deeds (*o*). The parol agreement by itself would, as regards land, be ineffective, as contrary to the Statute of Frauds, but the deposit is an act of part performance taking the case out of the statute (*p*).

A deposit of a material part of the deeds (*q*), or even of one old deed falsely stated to be the only deed, there being in fact many subsequent ones (*r*), has been held sufficient.

Where there is a deposit of deeds on an advance, the Court will presume an agreement that an equitable mortgage was intended, but the mere production by a creditor of title deeds, without explanation or evidence to show any connection between the debt and the possession of the title deeds, is insufficient (*s*).

When a deposit covers future advances.

A deposit of title deeds is *primâ facie* a security only for the amount then due, but it may be extended to future advances either by evidence that there was a parol agreement at the time that it should be so extended, or by evidence that the further advance was made on the security of the deeds (*t*).

Effect of deposit of lease.

An equitable mortgagee, by deposit of a lease, cannot be compelled by the lessor to take a legal assignment, and does not become liable to him in respect of the rent and covenants in the lease, although he may take possession (*u*).

(*o*) Russel *v.* Russel, 1 B. C. C. 269; Edge *v.* Worthington, 1 Cox, 211; *Ex parte* Haigh, 11 Ves. 403; Hiern *v.* Mill, 13 Ves. 114; *Ex parte* Mountford, 14 Ves. 606.

(*p*) *In re* Beetham, 18 Q. B. D. 380, 766.

(*q*) Lacon *v.* Allen, 3 Drew, 579; Roberts *v.* Croft, 24 Beav. 223.

(*r*) Dixon *v.* Muckleston, L. R. 8 Ch. 155.

(*s*) Chapman *v.* Chapman, 13 Beav. 308.

(*t*) *Ex parte* Whitbread, 19 Ves. 209; *Ex parte* Kensington, 2 Ves. & Bea. 79. In a subsequent case (*Ex parte* Hooper, 1 Mer. 9), Lord Eldon expressed an opinion that the doctrine of equitable mortgage by deposit ought never to have been established, and he added that he was still more dissatisfied with the principle upon which he had acted of extending the original doctrine so as to make the deposit a security for further advances.

(*u*) Moore *v.* Gregg, 2 Phil. 717; Moores *v.* Choat, 8 Sim. 508.

III. *The rights and remedies of mortgagor and mortgagee as regards redemption, foreclosure, and judicial sale, and the powers of a mortgagor in possession.*

Right of mortgagor to redeem.

If, as is usually the case, the money is not paid at the time appointed in the proviso for redemption, the estate of the mortgagee becomes absolute at law; but the Court, in the exercise of its equitable jurisdiction, enables the mortgagor at any time to redeem on payment to the mortgagee of the principal and interest due, together with the costs properly incurred by him in relation to the security; hence the estate of the mortgagor, after the day has passed without payment, is called an equity of redemption. This right may be barred by foreclosure.

Foreclosure.

A mortgagee of land, whether legal or equitable, may at any time after the day named for payment in the mortgage deed commence an action claiming foreclosure (*x*). The Court will thereupon decree an account to be taken of the amount due, and will name a time at the end of which, if the money is not paid, a mortgagor will be foreclosed. This time will, however, be enlarged in certain cases. After an absolute decree for foreclosure has been made, the mortgagee becomes absolute owner in equity as well as at law, of the mortgaged property.

Sale in action for redemption or foreclosure.

By the Conveyancing Act, 1881 (sect. 25), it is provided as follows:—

(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption, in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage

(*x*) James *v.* James, L. R. 16 Eq. 153. The right of foreclosure does not extend to a pledge of personal chattels, the remedy in respect to which is sale. Carter *v.* Wake, 4 C. D. 605.

money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

The power of ordering a sale conferred on the Court by the above enactment, applies to equitable as well as legal mortgages(*y*), including an equitable mortgage by deposit of title deeds(*z*), and may be exercised at any time before foreclosure (*a*). The Court can order a sale on the application of a subsequent mortgagee without the consent of prior ones, and can give the conduct of the sale to the subsequent mortgagee, but will in such a case fix a reserved price of such an amount as will be sufficient to cover the sum due on the prior mortgages (*b*). The Court may also give the conduct of the sale to a mortgagor, or allow him to sell out of Court, although the mortgagee has given him notice requiring payment (*c*).

(*y*) Wade *v.* Wilson, 22 C. D. 225.

(*z*) Oldham *v.* Stranger, W. N. 1885, p. 128.

(*a*) Union Bank of London *v.* Ingram, 20 C. D. 463; Davies *v.* Wright, 32 C. D. 220.

(*b*) Woolley *v.* Colman, 21 C. D. 169.

(*c*) Brewer *v.* Square, (1892) 2 Ch. 111.

A mortgagor seeking to redeem after the day appointed in the proviso for redemption, must give to the mortgagee six months' notice of his intention to pay off the debt, or pay him six months' interest in lieu of notice (*c*). But it has been held, in a recent case, that this rule does not apply to an equitable mortgage by deposit (*d*). Mortgagee entitled to six months' notice or six months' interest.

If a mortgagee takes proceedings to realise his security, he is bound to accept the principal money and costs with interest up to the time of payment, and cannot claim further interest in lieu of the six months' notice (*e*). But in a case where the mortgage was of a reversionary interest in a trust fund, and the trustees on its falling into possession petitioned the Court that the mortgage debt should be paid out of the fund, it was held that the ordinary rule applied, and the mortgagee was entitled to six months' notice or six months' interest (*f*). And where in an administration suit (not instituted by the mortgagee) an order is made for sale free from the incumbrances of those who consent to the sale, and a mortgagee consents, he is entitled to six months' interest from the date of his consent, and if the sale does not take place within the six months then to further interest up to the time of payment (*g*).

It sometimes happens that when a mortgagor comes to redeem, the mortgagee claims to be paid not only the money secured by the particular mortgage, but also the money secured by some other mortgage—in other words to consolidate the two. The law as to consolidation applicable to mortgages made before 1st January, 1882, is, that if a person makes two mortgages of different properties to the same person to secure different debts, or if the mortgages are in the first instance made to two different persons, and they subsequently become vested by transfer in the same person, the mortgagor cannot redeem one with- The law as to consolidation of mortgages before 1882.

(*c*) Browne *v.* Lockhart, 10 Sim. 430.

(*d*) Fitzgerald's Trustee *v.* Mellersh, (1892) 1 Ch. 385.

(*e*) Letts *v.* Hutchins, L. R. 13 Eq. 176; *In re* Alcock, 23 C. D. 372.

(*f*) Smith *v.* Smith, (1891) 3 Ch. 550.

(*g*) Day *v.* Day, 31 Beav. 270.

out the other, assuming that the time has come for redeeming both (*h*). But the rule does not apply if previously to the union of the two mortgages the equity of redemption of one estate has been assigned to a third party. Thus, if a person mortgages Blackacre to A. for £100, and Whiteacre to B. for £50, and then sells and conveys the equity of redemption of Blackacre to C., and then both mortgages are transferred to D., C. is entitled to redeem the mortgage of Blackacre without paying also the money due to D. on the Whiteacre mortgage (*i*).

The rule altered by Conveyancing Act, 1881.

It is provided by the 17th section of the Conveyancing Act, 1881, that a mortgagor seeking to redeem any one mortgage shall by virtue of the Act be entitled to do so, without paying any money due under any separate mortgage made by him or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem. But this enactment applies only when the mortgages or one of them are or is made after the 31st December, 1881, and so far as a contrary intention is not expressed in them or one of them.

It follows that if a person having mortgaged Blackacre borrows from the same person a further sum on the security of Whiteacre, intending that the latter sum shall be charged on Blackacre also, the second deed should recite or refer to the first and expressly make both properties subject to both debts (*j*).

When the equitable right to consolidate several mortgages exists, and the mortgagee, with a view to exercise his power of sale over the property comprised in one of the mortgages, gives the notice required by sect. 20 of the Conveyancing Act, the right to consolidate is not thereby lost (*k*).

(*h*) Vint *v.* Padgett, 2 De G. & J. 611.

(*i*) Harter *v.* Colman, 10 C. D. 630; disapproving of Beevor *v.* Luck, 4 Eq. 537, in which the contrary was decided. See also Jennings *v.* Jordan, 6 Ap. Ca. 698; Chesworth *v.* Hunt, 5 C. P. D. 266.

(*j*) This is better than inserting in one or both of the deeds a clause in general terms negativing the operation of sect. 17 of the Act. See Precedents, Nos. LXXVII., LXXVIII., *infra*, pp. 621, 622.

(*k*) Garfitt *v.* Pound, 45 C. D. 553.

If a mortgagee of property lends a further sum to the mortgagor on the security of the same property, one mortgage cannot be redeemed without the other, and this rule applies to mortgages of equitable personalty as well as to mortgages of real estate (*k*). Mortgagee lending further sum to mortgagor.

All simple contract and specialty debts may be tacked to a mortgage debt as against the heir, devisee, or executor of a mortgagor, where the equity of redemption is assets (*l*); but so as not to give the mortgagee a preference over other creditors, where the assets are insufficient (*m*). Simple contract and specialty debts may be tacked to mortgage debt.

A further advance cannot be tacked to a prior legal mortgage upon the strength of a parol agreement to that effect (*n*).

The subject of tacking as between successive incumbrancers is considered in a subsequent part of this Dissertation.

All persons having an estate or interest in the equity of redemption are entitled to redeem. Consequently, the trustee of a bankrupt may redeem, as well as subsequent mortgagees and judgment creditors (*o*). A first mortgagee must accept payment of the mortgage debt from the second mortgagee, and convey to him the mortgaged estate, and also if required transfer to him or to his nominee the mortgage debt (*p*). Persons entitled to redeem.

Sureties for the payment of the mortgage debt may also redeem. It was decided that if a mortgagee advanced a further sum to the mortgagor on a further charge of the property, the surety could not redeem the mortgage without paying the further advance as well as the original sum (*q*), but this decision may be Sureties.

(*k*) Watts *v.* Simes, 1 D. M. & G. 240.

(*l*) Rolfe *v.* Chester, 20 Beav. 610; Thomas *v.* Thomas, 22 Beav. 341.

(*m*) Talbot *v.* Frere, 9 C. D. 568.

(*n*) *Ex parte* Hooper and Others, 1 Mer. 7.

(*o*) A judgment creditor had, by virtue of 1 & 2 Vict. c. 110, s. 13, an actual estate or interest in equity in the debtor's land, and although the recent Act, 27 & 28 Vict. c. 112, provides that no judgment shall affect land until execution, the Court will allow a judgment creditor to obtain the appointment of a receiver, and thus remove the legal impediment to his execution. See *supra*, pp. 141—145.

(*p*) Smith *v.* Green, 1 Col. 555; Conveyancing Act, 1881, s. 15; Conveyancing Act, 1882, s. 12.

(*q*) Williams *v.* Owen, 13 Sim. 597.

regarded as overruled (*r*). Where distinct sums are advanced at the same time on distinct securities, and a third person becomes security for one of the sums with knowledge of the whole transaction, the mortgagee will, except in cases coming within the 17th section of the Conveyancing Act, 1881, be entitled to tack both the debts, and to retain the securities for them against the surety until both sums are paid (*t*).

When a mortgagor sells the equity of redemption, and the purchaser borrows a further sum.

If A. mortgages to B. and then sells and conveys the equity of redemption to C., and C. afterwards further charges to B. for an additional advance, A. may be sued by B. on the covenant in the original mortgage deed, but if he pays, he is entitled to have the property conveyed to him without paying the further advance made by B. to C. In other words, he is entitled to what is in effect a transfer of the first mortgage (*u*).

Tenant for life.

Where an equity of redemption is settled, the tenant for life has a right to redeem in preference to persons entitled in remainder (*x*), but having redeemed, he cannot compel those in remainder to redeem him. He may make the remaindermen parties to a redemption suit instituted by him against the mortgagor, so that they may be present at the taking of the accounts; he must, however, pay the costs of such remaindermen, and add them to his mortgage, and on his death his representative may bring an action for foreclosure against the remaindermen (*y*).

The personal representative of a deceased mortgagor of real estate is not entitled to redeem in that capacity (*z*).

Forfeiture of equity of redemption if mortgagor makes second mortgage, concealing the first.

By 4 & 5 W. & M. c. 16, it is provided that if any person having once mortgaged, shall again mortgage, and shall not discover to the second mortgagee the former mortgage, he shall have no relief or equity of redemption against such second mortgagee, and the

(*r*) See Newton *v.* Chorlton, 10 Hare, 662; Pearl *v.* Deacon, 24 Beav. 180; Forbes *v.* Jackson, 19 C. D. 615.

(*t*) Fairbrother *v.* Wodehouse, 23 Beav. 18.

(*u*) Kinnaird *v.* Trollope, 39 C. D. 636.

(*x*) Ravald *v.* Russell, 1 Younge, 19; Raffety *v.* King, 1 Keen. 618; Wicks *v.* Scrivens, 1 John. & Hem. 215.

(*y*) Riley *v.* Croydon, 2 Dr. & Sm. 293.

(*z*) Cattly *v.* Simpson, 34 L. J. Ch. 96.

second mortgagee shall hold the land freed from the equity of redemption, and as fully as if his mortgage had been an absolute purchase. It has been decided that the statute, being penal in its character, must be construed strictly, and that neither an equitable mortgagee by deposit of title deeds, nor a mortgagee under a deed in the form of a further charge without a proviso for redemption, is a second mortgagee within the meaning of the Act; and moreover that the Act confers no active remedy which can be enforced in equity (*a*).

Power of mortgagor in possession.

A mortgagor in possession is treated in equity as owner of the mortgaged property for most purposes, and he may exercise all ordinary acts of ownership. Thus, he may cut timber, unless the estate without the timber is a scanty security (*b*), and he may bring actions at law in his own name for the recovery of rents and profits, or to prevent or recover damages, in respect of any trespass or other wrong relative to the mortgaged property, unless the cause of action arises on a lease or other contract made by him jointly with any other person (*c*). A mortgagor in possession, where the mortgage is made after the 31st Dec., 1881, is empowered by the Conveyancing Act, 1881, to make agricultural or occupation leases for any term not exceeding 21 years, or building leases for any term not exceeding 99 years, subject to certain conditions which are set out at length in section 18 of the Act.

Recent Act enables a mortgagor in possession to grant leases.

Rent and benefit of lessee's covenants under lease by mortgagor under power pass to mortgagee if he takes possession.

When a lease is granted under the statutory power, and the rent is reserved to, or covenants are entered into with, the mortgagor as lessor, if the mortgagee afterwards takes possession, or gives notice to pay the rent to him, the right to such rent and to distrain for the same, or to sue on the covenants, will pass to him (*d*).

Mortgagor with power of leasing.

A mortgagor with a power of leasing may grant a lease to a trustee for himself (*e*).

(*a*) Kennard *v.* Futvoye, 2 Giff. 81.

(*b*) King *v.* Smith, 2 Hare, 239.

(*c*) 36 & 37 Vict. c. 66, s. 25, sub-s. 5.

(*d*) Municipal Investment Building Society *v.* Smith, 22 Q. B. D. 70.

(*e*) Bevan *v.* Habgood, 1 J. & H. 222.

Mortgagor in possession may cut growing crops.

A mortgagor may cut and remove growing crops until possession has been demanded by the mortgagee, but not after such demand (*e*).

Mortgagor may inspect deeds.

A mortgagor is entitled, at his own cost, and on payment of the mortgagee's costs, to inspect and make copies of documents relating to the mortgaged property in the custody or power of the mortgagee (*f*).

IV.—*The rights and powers of a mortgagee as regards sale, insurance against fire, the appointment of a receiver, and action on the covenant.*

The Conveyancing Act provides as follows:—

Powers incident to estate or interest of mortgagee.

Sect. 19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

(ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate as the mortgage money; and

(*e*) Bagnall *v.* Viller, 12 C. D. 812.

(*f*) Conv. Act, 1881, s. 16.

(iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and

(iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

Regulation of exercise of power of sale.

Sect. 20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

(ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Conveyance, receipt, &c., on sale.

Sect. 21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the

property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a

person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipts, discharges, &c.

Sect. 22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder: and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage, shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money.

Sect. 23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act, shall not exceed the amount specified in the mortgage deed, or if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorized to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to an obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment, powers, remuneration, and duties of receiver.

Sect. 24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act, shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire,

out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

(i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

The above statutory power of sale is substituted for that which was formerly inserted in every well-drawn mortgage, and is substantially the same.

Contract to sell under power.

A contract for sale entered into by a mortgagee after giving the notice required by the power, but before the expiration of the period within which the money must be paid in accordance with the notice, is rendered valid by the subsequent expiration of that period without payment (*f*).

Whether purchaser could safely complete if he is aware that sale is improper.

The Act provides that a conveyance made in professed exercise of the power is not to be impeachable on the ground of irregularity (*g*), and a clause to this

(*f*) Major *v.* Ward, 5 Hare, 598.

(*g*) Sect. 21. If a sale is made in exercise of an express power contained in a mortgage executed before 1 Jan. 1882, and the power is so drawn as to be only exerciseable after default or notice, it must be seen whether the deed contains a clause protecting purchasers from the responsibility of ascertaining whether default has been made, or the required notice has been given.

As to sales by mortgagees under express power.

effect was always inserted in well-drawn mortgages before the Act. Under such a clause, as well as under the statutory provision, a sale by a mortgagee will be valid as regards the purchaser, although it may turn out that the security was satisfied at the time, provided that the purchaser had no knowledge that this was so (*h*). But if facts are actually brought to the purchaser's knowledge showing that the sale is improper, he could not safely complete. Thus, in a case where a mortgagee sold, after tender of the principal and interest, to a person who bought with knowledge of the tender, the Court set aside the sale, although the mortgage deed provided that "upon a sale purporting to be made under the aforesaid power no purchaser shall be bound to see or inquire as to the propriety or regularity of the sale, and that notwithstanding any impropriety or irregularity the same shall, as regards the purchaser, be deemed to be within the power, and valid accordingly" (*i*).

Case of oppressive exercise of power.

If a mortgagor has conveyed the equity of redemption by way of second mortgage, the notice required by the Act of 1881 ought to be given to the second mortgagee, the term "mortgagor" in the Act being defined as including persons deriving title under the original mortgagor. And if a mortgagee fails to give such notice, he will be liable in damages for such default (*k*).

Notices before sale should be given to a subsequent mortgagee.

A mortgagee is liable to the mortgagor and to subsequent mortgagees for a loss arising by reason of a mistake in the particulars of sale prepared by his auctioneer (*l*).

Mortgagee liable for loss owing to a mistake in particulars.

A clause may be inserted in a mortgage dispensing with the necessity for giving notice prior to a sale, but a solicitor inserting such a clause in a mortgage to

Clause dispensing with notice improper in mortgage to solicitor.

If the deed contains no such clause, it might be very difficult to prove to the satisfaction of the purchaser that the condition on which the power was to be exercised had arisen. (See Hobson *v.* Bell, 2 Beav. 17.)

(*h*) Dicker *v.* Angerstein, 3 C. D. 600.

(*i*) Jenkins *v.* Jones, 2 Giff. 99; Selwyn *v.* Garfit, 38 C. D. 273.

(*k*) Hoole *v.* Smith, 17 C. D. 434.

(*l*) Tomlin *v.* Luce, 43 C. D. 191.

himself from his client would commit a breach of duty (*m*), except under special circumstances (*n*).

Sale at inadequate price valid.

The Court will not interfere as against a *bonâ fide* purchaser from a mortgagee, although the price is very inadequate, unless it is so low as to be evidence of fraud (*o*).

How power of sale may be exercised.

A second mortgagee may purchase from a first mortgagee selling under his power of sale (*p*); but a mortgagor purchasing under a power of sale in a first mortgage has no title to priority as against his own second mortgagee (*q*). Under the usual power of sale, the mortgagee may sell subject to a stipulation that a part of the purchase-money may remain on mortgage (*r*).

Position of mortgagee on mortgagor's bankruptcy.

On the bankruptcy of the mortgagor, the mortgagee, whether his mortgage be legal or equitable, may apply to the Court of Bankruptcy, and obtain an order for a sale under the Bankruptcy Rules, 1883 (*s*). The Court will, upon such application, proceed to inquire whether the applicant is a mortgagee, and, if so, will take an account of what is due to him for principal, interest, and costs. A sale will then be directed, and the moneys to come from such sale will be applied, first, in paying the costs, charges, and expenses of the trustee of and occasioned by the application to the Court, and attending the sale; secondly, in payment of the principal, interest, and costs due on the mortgage; and the surplus (if any) will be paid to the trustee. The conduct of the sale is in the discretion of the Court, and will, as a general rule, be given to the trustee, unless the security is insufficient, in which case it will probably be given to the mortgagee (*t*).

(*m*) Cockburn *v.* Edwards, 18 C. D. 449.

(*n*) Pooley's Trustee *v.* Whetham, 33 C. D. 111.

(*o*) Warner *v.* Jacob, 20 C. D. 220.

(*p*) Parkinson *v.* Hanbury, 1 Dr. & S. 143; Shaw *v.* Bunney, 2 D. J. & S. 468; Kirkwood *v.* Thompson, *ib.* 613.

(*q*) Otter *v.* Lord Vaux, 2 K. & J. 650.

(*r*) Davey *v.* Durrant, 1 De G. & J. 535. See also Thurlow *v.* Mackeson, L. R. 4 Q. B. 97, as to what arrangement amounts to a good exercise of a power of sale.

(*s*) Rules 65–69.

(*t*) *In re* Jordan, 13 Q. B. D. 228.

If the sale money is insufficient to pay the debt, the mortgagee may prove for the deficiency. But it is not imperative on the mortgagee to apply to the Bankruptcy Court under the above order; he may, if he prefers it, proceed in the Chancery Division of the High Court of Justice for foreclosure, or exercise the power of sale (if any) reserved by the deed or conferred by statute, or pursue any other of his ordinary remedies.

Mortgagee may pursue all his remedies simultaneously.

It is settled that a mortgagee cannot be interfered with in the exercise of any of his powers except on the payment of principal, interest, and costs (*u*); and he may pursue all his remedies at one and the same time, or separately, as he may think fit. If pending a foreclosure suit, he sues on the covenant, and obtains full payment, the mortgagor is, by the fact of payment, entitled to a reconveyance, and foreclosure is of course prevented; if a part only of the debt is recovered in the action the mortgagee may foreclose for non-payment of the remainder. If, on the other hand, he obtains foreclosure first, and finds that the value of the estate is not sufficient to cover his debt, he is not precluded from suing on the covenant, so long as the mortgaged estate remains in his power, but by so doing he gives to the mortgagor a renewed right to redeem, or in other words opens the foreclosure. If, however, the mortgagee after he has foreclosed sells the mortgaged estate, and thus prevents himself from restoring it, the Court will by injunction restrain him from afterwards suing on the covenant (*x*); but this of course does not apply to a sale by a mortgagee who has not foreclosed under his power of sale (*y*).

Opening the foreclosure.

(*u*) Paynter *v.* Carew, Kay, App. xxxviii., but this does not apply when the mortgagee is the mortgagor's solicitor, and therefore in a fiduciary position towards him. Quellor *v.* Jones, 24 C. D. 289.

(*x*) Lockhart *v.* Hardy, 9 Beav. 349; Palmer *v.* Hendrie, 27 Beav. 349; 28 *ib.* 341.

(*y*) Rudge *v.* Hutchins, L. R. 8 C. P. 358.

V. *The powers, duties, and liabilities, of a mortgagee in possession.*

Mortgagee in possession must account to mortgagor.

A mortgagee may, at any time after the day appointed for payment, enter into possession of the mortgaged property, and receive the rents towards payment of his debt. He will have to account to the mortgagor for the rents so received, and he will be responsible for gross and wilful negligence or injury, such as pulling down buildings, &c., but he will be allowed for necessary repairs (*z*). He may take possession of part of the mortgaged property, leaving the rest in the possession of the mortgagor (*a*).

Receipt of rent when constitutes taking possession.

In order to constitute a mortgagee in possession, he must receive the rents from the tenant in such a way as to be in effect a displacing of the mortgagor in the management and control of the property. If the mortgagor's agent receives the rents from the tenant and then hands over the whole to the mortgagee, the latter does not thereby become mortgagee in possession (*b*).

Could not grant binding leases before 1882.

A mortgagee in possession could not, until the recent Act, without an express power, grant leases which would be binding in equity on the mortgagor. But the Conveyancing Act, 1881, sect. 18, confers on mortgagees in possession powers to grant agricultural and occupation leases, and building leases, similar to those given to mortgagors in possession, and which are above referred to.

Is bound to deal with property as a prudent owner.

A mortgagee in possession is bound to deal with the property in the same way as a prudent man would deal with his own; he is not bound to engage in, and will not be allowed for, adventures and speculations (*c*). Thus, he must not open mines (*d*), unless

(*z*) Sandon *v.* Hooper, 6 Beav. 246. In order to entitle a mortgagee in possession to permanent improvements or substantial repairs he must make out a case for them at the trial. Tipton Green Colliery Co. *v.* Tipton Moat Colliery Co., 7 C. D. 192.

(*a*) Simmins *v.* Shirley, 6 C. D. 173.

(*b*) Noyes *v.* Pollock, 32 C. D. 53.

(*c*) Hughes *v.* Williams, 12 Ves. 493; Cocks *v.* Gray, 1 Giff. 77.

(*d*) Thorneycroft *v.* Crockett, 16 Sim. 445; Hood *v.* Easton, 2 Giff. 692.

the security is insufficient (*e*); and if he comes into possession of mines already open, he will not be liable for not advancing more in the management of them than a cautious owner would spend, as it is not to be expected that he would risk his own fortune in a speculation and incur hazard in an adventure which, if successful, is ultimately to redound to the benefit of the mortgagor (*f*).

May cut and sell timber other than ornamental timber.

A mortgagee in possession, where the mortgage is made after the 31st December, 1881, may cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, and may contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract (*g*).

How rents to be applied.

If the net rents received by the mortgagee are more than sufficient to keep down the interest on his debt, the surplus must be applied towards payment of the principal; and a question often arises in what manner the account is to be taken as to such surplus rent, *i. e.*,

Annual rests.

whether annual rests are to be made, and the principal to be sunk each year to the amount of the surplus rents, or whether the interest shall be allowed to run on until the whole debt is discharged. It seems to be now settled that an account with annual rests will not be directed, unless at the time when the mortgagee entered into possession no interest was in arrear, as a mortgagee is not bound to receive his money in driblets. If he enters into possession when no interest is due, he shows his intention to receive payment of the debt in driblets, and therefore the account goes with rests; but if the interest is in arrear, the fact of his taking possession affords no evidence of such an intention, as he is driven to take possession by the non-payment of the interest, and therefore the account goes on till the whole debt is satisfied (*h*). But a mortgagee of leaseholds may take possession when

(*e*) Millett *v.* Davey, 31 Beav. 470.

(*f*) Rowe *v.* Wood, 2 J. & W. 555.

(*g*) Conveyancing Act, 1881, s. 19.

(*h*) Nelson *v.* Booth, 3 De G. & J. 119.

there is no arrear of interest, under circumstances which may not render him liable to account with annual rests, as if he enters in order to prevent a forfeiture for non-payment of ground rent or non-insurance (*i*).

When mortgagee in possession sells part.

But if a mortgagee in possession sells a part of the mortgaged property under a power of sale, he must apply the proceeds first in payment of interest and costs, and then either pay the balance to the mortgagor, or apply it in reduction of principal; and in taking an account against a mortgagee who has retained sale moneys beyond the interest and costs due, a rest must be made at the time of the receipt of the proceeds of sale, even though he may have entered into possession when interest was in arrear (*k*).

Mortgagee taking possession or selling places himself in fiduciary position.

A mortgagee taking possession or selling under his power of sale places himself in a fiduciary position, and if he chooses to receive the rents himself, or to act professionally in the conduct of the sale, he will not be entitled to any commission or profit costs (*l*). And even where he has not placed himself in a fiduciary position, a mortgagee is not entitled to charge the mortgaged property or the mortgagor for his personal services (*m*).

VI. *The effect of the Statutes of Limitation as between mortgagor and mortgagee.*

Mortgagee barred of remedy against the land, where mortgagor remains in possession, at end of twelve years after last payment or acknowledgment.

According to the Statutes of Limitation now in force (*n*) a mortgagee allowing the mortgagor to remain in possession of the land, is barred of his right to recover that possession by an action of ejectment or to bring an action of foreclosure, and of all other remedies against the land, at the expiration of twelve years after the last payment of any part of the principal money or interest secured by the mortgage, unless in the meantime an acknowledgment of the mortgagee's title is given to him or his agent in writing

(*i*) Patch *v.* Wild, 30 Beav. 99.
(*k*) Thompson *v.* Hudson, L. R. 10 Eq. 497.
(*l*) Bonithon *v.* Hockmore, 1 Vern. 315; Matthison *v.* Clarke, 3 Drew. 3.
(*m*) *In re* Roberts, 43 C. D. 52. And see Vol. 2, Dissertation on "Trustees."
(*n*) 3 & 4 Wm. 4, c. 27, ss. 2, 14, 24; 7 Wm. 4 & 1 Vict. c. 28; 37 & 38 Vict. c. 57, s. 1.

signed by the mortgagor, in which case time runs from the date of the acknowledgment. If there has been no payment of principal money or interest under the deed, and no acknowledgment, the twelve years will run either from the date of the mortgage or from the day fixed for redemption, probably the latter. If a mortgagee obtains an order for foreclosure within the twelve years, he may bring an action of ejectment to recover the possession of the land at any time within twelve years from the date of the foreclosure order, as such an order vests the beneficial ownership in him for the first time (*n*).

By whom principal or interest must be paid in order to prevent the statute from running.

A payment of principal or interest in order to bar the operation of the statute must be by the mortgagor or by some person bound or entitled to make such payment on his behalf, and a payment of rent by a tenant of the mortgaged property to the mortgagee in consequence of a notice from the latter is not such a payment (*o*).

Action on covenant to recover principal money must be brought within twelve years after right has accrued, or last payment or acknowledgment.

If a mortgage deed contains a covenant to pay the principal money and interest, or is accompanied by the mortgagor's bond for such payment, an action on the covenant or bond against the mortgagor or his representatives must be brought within twelve years next after the right to receive the same has accrued, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person by whom the same is payable, or his agent, to the person entitled thereto or his agent, and in such case time will run from the date of the last payment or acknowledgment (*p*). If a surety joins in the covenant or bond, or gives a separate covenant or bond, the question whether the remedy against the surety as well as against the mortgagor himself is barred at the end of twelve years remains undecided. In any case the payment of interest by the mortgagor within the twelve years

(*n*) Heath *v.* Pugh, 6 Q. B. D. 345.

(*o*) Harlock *v.* Ashberry, 19 C. D. 539.

(*p*) 37 & 38 Vict. c. 57, s. 8; Sutton *v.* Sutton, 22 C. D. 511; and the same rule applies to a collateral bond; Fearnside *v.* Flint, 22 C. D. 579; Lindsell *v.* Phillips, 30 C. D. 291.

prevents the statute from running in favour of the surety (*q*).

If after the death of a mortgagor the mortgage continues, and the interest is regularly paid, the mortgagee is not debarred, should the property become depreciated in value, from requiring payment out of the mortgagor's assets under his personal covenant, however long a time may have elapsed since the death (*r*). It follows that the personal representative of a mortgagor cannot safely distribute the assets during the continuance of the mortgage.

Position of mortgagee and personal representative of mortgagor if mortgage continues after death of latter.

It is provided by sect. 42 of the 3 & 4 Wm. 4, c. 27, that no arrears of interest in respect of any sum of money charged on land shall be recovered by any distress, action, or suit but within six years next after the same shall become due, or next after such acknowledgment as therein mentioned.

Only six years' arrears of interest can be recovered against land.

It has been held that this section applies to a foreclosure suit or any other legal proceeding taken by the mortgagee against the land or the proceeds of the land, and that where the purchase-money of land in mortgage has been paid into Court under the Lands Clauses Act, or the Trustee Relief Act, so that the mortgagee cannot obtain payment of it without an application to the Court, the section precludes him from receiving more than six years' arrears of interest, whether the application for payment out is made by himself or by the mortgagor (*s*).

Enactment applies whenever legal proceeding by mortgagee is necessary.

But sect. 42 does not apply where a mortgagee has sold under his power of sale, and has in his hands the proceeds of the sale, so as to preclude him from retaining more than six years' arrears in the event of an action brought against him by the mortgagor for the surplus proceeds (*t*). And it would seem on the

It does not apply to sale by mortgagee under power, and probably not to redemption action by mortgagor.

(*q*) *In re* Powers, 30 C. D. 291; *In re* Frisby, 43 C. D. 106.

(*r*) *In re* Marsden, 26 C. D. 783.

(*s*) Hunter *v.* Nockolds, 1 M. & G. 641; *Re* Stead's Mortgaged Estates, 2 C. D. 713; *In re* Slater's Trusts, 11 C. D. 227. See also Clarkson *v.* Henderson, 14 C. D. 348.

(*t*) *Re* Marshfield, 34 C. D. 721, following Edmunds *v.* Waugh, L. R. 1 Eq. 418, and not Mason *v.* Broadbent, 33 Beav. 296.

same principle that it would not apply to an action by the mortgagor for redemption.

Before recent Act twenty years' arrears of interest might be recovered in action on covenant in mortgage deed, but now six years only, *semble*.

By sect. 3 of the Act 3 & 4 Will. 4, c. 42, twenty years were fixed as the period within which actions of covenant might be brought, and it was held that this section must be taken as partially repealing, or engrafting an exception on, sect. 42 of c. 27, and that the joint effect of the two Acts was that, as regards money secured by mortgage of land, six years' arrears of interest only could be recovered against the land, but that if the mortgage deed contained, or was accompanied by, a covenant or bond to pay principal and interest, twenty years' arrears might be recovered by an action on the covenant or bond (*u*). It is apprehended that sect. 9 of the recent Act, 37 & 38 Vict. c. 57, providing in effect that (among other sections) sect. 42 of 3 & 4 Will. 4, c. 27, shall remain in force, repeals by implication the exception engrafted on that section by sect. 3 of c. 42, so that the mortgagee's right is now confined to six years' arrears, whether he proceeds against the land by foreclosure or otherwise, or against the mortgagor on the covenant or bond.

Rule as to six years' arrears does not apply, where prior mortgagee has been in possession within a year before action,

but does apply where mortgaged land is reversionary.

Section 42 contains a proviso that where a prior mortgagee has been in possession of the land within one year next before an action brought by a subsequent mortgagee, the latter may recover the arrears of interest which have become due during the whole time that the prior mortgagee has been in possession, although it may have exceeded six years. But the fact that the mortgaged property is a reversion or remainder does not prevent the six years from running during the continuance of the prior estate (*x*).

Mortgagee not benefited by express trust to secure the money.

Since the recent Act (*y*) a mortgagee gains no advantage as regards the period within which he must pursue his remedies, by the existence of an express trust for securing the money.

(*u*) Hunter *v.* Nockolds, 1 M. & G. 641.

(*x*) Sinclair *v.* Jackson, 17 Beav. 405; Smith *v.* Hill, 9 C. D. 143.

(*y*) 37 & 38 Vict. c. 57, s. 10.

An acknowledgment by a mortgagor, or his personal representative, given to a prior incumbrancer, will not entitle that prior incumbrancer to recover, as against a subsequent incumbrancer, more than six years' arrears of interest (*z*).

Twenty years is the limit where there is a covenant and no mortgage of land.

A covenant to pay principal money and interest without any mortgage, or such a covenant contained in a mortgage of personal estate only, is within the operation of sect. 3 of 3 & 4 Will. 4, c. 42, so that under such a covenant the right to recover either principal or interest is not barred until the expiration of twenty years. And where there are two or more joint covenantors, an acknowledgment or payment of part of the principal or interest by one will not prevent the statute from running in favour of the other (*a*).

When mortgagor barred of his equity of redemption.

When a mortgagee has taken possession, the mortgagor's right to redeem will be barred at the end of twelve years from the time of taking possession, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, is given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him, in which case the time will run from the date of the acknowledgment, or the last acknowledgment, if more than one. And the Acts make provision for the case of there being more than one mortgagor or mortgagee (*b*), and an acknowledgment being given to or by one only. Twelve years' uninterrupted possession by the mortgagee without intermediate payment or acknowledgment is an absolute bar as against the mortgagor and all persons claiming under him, although he or they may have been under disability, and although the equity of redemption may have been devised to a tenant for life with remainders over (*c*).

(*z*) Bolding *v.* Lane, 1 De G. J. & S. 122.

(*a*) 19 & 20 Vict. c. 97, s. 14.

(*b*) 3 & 4 Wm. 4, c. 27, s. 28; 37 & 38 Vict. c. 57, s. 7.

(*c*) Forster *v.* Patterson, 17 C. D. 132; Brown *v.* Bishop of Cork, 1 Dr. & W. 700.

Right of redemption not revived by subsequent acknowledgment.

Where a mortgagee has been in possession for more than the statutory period without acknowledgment, the right of redemption is extinguished (*d*), and cannot be revived by a subsequent acknowledgment (*e*).

VII. *The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt.*

Formerly the personalty was the primary security as a general rule.

Exceptions to rule.

It was formerly the law that if a mortgagor died intestate, or by his will showed no contrary intention, his personal estate was liable to the payment of his mortgage debts in exoneration of the land comprised in the mortgage (*f*). This rule, however, only applied where the mortgage debt was originally the debt of the deceased mortgagor; thus, if A. became entitled by descent or purchase to mortgaged land, and afterwards died intestate, his heir took the land *cum onere*, and was not entitled to have it exonerated out of the personal estate, even though upon a transfer of the mortgage in A.'s lifetime he may have covenanted to pay the money (*g*). *A fortiori*, if a person having only a limited interest in land subject to a mortgage entered into a bond or covenant for payment of the debt, the bond or covenant was considered as auxiliary only. Again, the rule would not apply where an intention appeared on the face of the mortgage deed, or could be implied from the dealings with the property, that the land should be the primary security. Thus, where a mortgage was made containing the usual covenant by the mortgagor for

(*d*) Sect. 34.

(*e*) *In re* Alison, 11 C. D. 284; Sanders *v.* Sanders, 19 C. D. 373. In the latter case, the Court treated Stansfield *v.* Hobson, 3 D. M. & G. 620, which apparently decided the contrary, as of no authority, on the ground that the point seems to have been overlooked.

(*f*) Howell *v.* Price, 1 P. Wms. 291.

(*g*) Evelyn *v.* Evelyn, 2 P. Wms. 664; Bagot *v.* Oughton, 1 P. Wms. 347; Woods *v.* Huntingford, 3 Ves. 128, 131; Scott *v.* Beecher, 5 Mad. 96; see also Bond *v.* England, 2 K. & J. 44, where the subject is fully discussed.

payment of the mortgage money, and subsequently the mortgagor settled the property subject to the mortgage upon trust for himself for life, with remainders over, leaving in himself the ultimate reversion in fee, which he devised by his will, it was held that his general personal estate was exonerated from the mortgage debt, the Court considering that the subsequent dealing with the property showed the intention of the mortgagor to make the land the primary security (*h*). And where property was mortgaged, and was then settled by the mortgagor subject to the mortgage, and with a proviso that the land should be the primary security, and the mortgagor afterwards paid off the debt out of his own money, it was held that the mortgage debt was to be considered as kept on foot for the benefit of his personal estate (*i*).

The law on this subject has been altered by the Real Estate Charges Acts, 1854, 1867, and 1877 (*k*).

Construction of Acts.

The result of these enactments is that as regards a mortgagor of freehold, copyhold, or leasehold property dying after the 31st December, 1877, or a purchaser of any such property dying after that date without having paid the whole of the purchase-money, the property will be the primary fund for payment of the mortgage debt or the unpaid purchase-money, as the case may be, whether such mortgagor or purchaser has died intestate or has disposed of the property by his will, unless in the latter case the will contains an expression of a contrary intention, and such contrary intention will not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate, or residuary real estate (*l*). If freeholds or copyholds and leaseholds are together made the subject of mortgage or contract, the burden must be borne by the respective estates according to their value.

(*h*) Lady Langdale *v.* Briggs, 8 De G. M. & G. 391.

(*i*) Pears *v.* Wrightman, 2 Jur. (N. S.) 586.

(*k*) 17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34. These are generally known as "Locke King's Acts."

(*l*) As to what would amount to a contrary intention, see Colston *v.* Roberts, 37 C. D. 677.

It has been held that a judgment debt, on which a writ of elegit has been issued and the land delivered to the creditor thereunder, comes within these Acts and the land is primarily liable (*m*).

Effect when real estate and property to which Acts do not apply are subjects of same mortgage.

When real estate and also property to which the Acts do not apply are the subjects of the same mortgage, in the administration of the mortgagor's estate, the real estate would have to bear such proportion of the mortgage debt as the value of such real estate bears to the value of the whole of the mortgaged property (*n*). So also when two estates are subject to the same mortgage, and one of them is specifically devised and the other passes under a residuary devise, the two estates must rateably bear the mortgage debt (*o*).

Primary liability of husband on mortgage of wife's land.

Upon a mortgage by a husband and wife of the wife's land, where the money is received by the husband, the husband and his estate are primarily liable (*p*). If the deed expresses that the money is paid to the husband and wife, that is *primâ facie* a payment to the husband; but it may be shown by extrinsic evidence that the payment was in fact for the benefit of the wife, and in that case the land will be primarily liable (*q*).

VIII. *The rights and priorities of several mortgagees and incumbrancers amongst themselves; the protection afforded to purchasers and mortgagees against concealed trusts and incumbrances by the possession of the legal estate; the doctrine of tacking; notice, actual and constructive, and the consequence of laches on the part of a mortgagee, particularly in reference to the title deeds.*

It sometimes happens that the same property is made the subject of several mortgages, the fact of the

(*m*) *In re* Anthony, (1892) 1 Ch. 450.

(*n*) Trestrail *v.* Newson, W. N. 1878, p. 13.

(*o*) Gibbins *v.* Eyden, L. R. 6 Eq. 371; see also Leonino *v.* Leonino, 10 C. D. 460.

(*p*) Tate *v.* Austen, 1 P. Wms. 264; Pocock *v.* Lee, 1 Vern. 604; see Scholefield *v.* Lockwood, 33 L. J. Ch. 106.

(*q*) Hudson *v.* Carmichael, Kay, 613; Clinton *v.* Hooper, 1 Ves. jun. 173; Earl of Kinnoul *v.* Money, 3 Swanst. 202, 211, note.

prior incumbrances being concealed from each subsequent mortgagee, or that a sale or mortgage is made by a person who is a trustee without power to sell or mortgage, or who is affected by notice of prior trusts or incumbrances, or whose title is otherwise defective in equity, to a person who has no knowledge of such circumstances. In these cases questions of priority arise—in the former, as between the successive mortgagees; and in the latter, as between the purchaser or mortgagee on the one hand, and the persons whose rights are prejudiced by the sale or mortgage on the other hand.

Cases in which questions of priority arise.

In determining such questions, two rules must be borne in mind. The one is, that where the equities are equal, the person who has the legal estate will prevail (*r*); and the second is, that as between persons having only equitable interests, if these equities are in other respects equal, priority of time gives the better equity, for *qui prior est tempore potior est jure* (*s*).

Rules applicable to such questions.

It has long been settled that if a person being a trustee on an express trust, or being affected by notice of a trust or incumbrance, conveys the legal estate to a purchaser or mortgagee for valuable consideration who has no notice, the latter is protected from such trust or incumbrance by the possession of the legal estate, and acquires an indefeasible title both at law and in equity, so that he may himself afterwards effectually sell or mortgage even to persons who have notice (*t*). And the protection of the legal estate extends to cases where the vendor or those from whom he claims is or are guilty of gross fraud. Thus in *Jones* v. *Powles* (*u*), Jones mortgaged to Holbrook, and afterwards paid off the mortgage, but took no reconveyance, so that Holbrook became a trustee for Jones;—Jones afterwards

Purchaser without notice may protect himself against trusts, &c., by legal estate.

Even in case of fraud.

(*r*) Francis' Maxims, Max. 1; 2 Fonblanque on Equity, 302.

(*s*) Rice *v.* Rice, 2 Drew. 73; *In re* Richards, 45 C. D. 589.

(*t*) Ferrers *v.* Cherry, 2 Vern. 383; Mertins *v.* Jolliffe, Ambl. 313; Sweet *v.* Southcote, 2 B. C. C. 66; Macqueen *v.* Farquhar, 11 Ves. 478; Carritt *v.* Real and Personal Advance Company, 42 C. D. 263.

(*u*) 3 M. & K. 581; see also Newton *v.* Newton, L. R. 4 C. A. 143; Young *v.* Young, L. R. 3 Eq. 1; Pilcher *v.* Rawlins, L. R. 7 C. A. 250. This last case overrules Carter *v.* Carter, 3 K. & J. 617.

died, and Meredith produced a document purporting to be the will of Jones, devising all his property to Meredith, but which document was in fact forged by him. Meredith borrowed money from Hall, and Holbrook, by the direction of Meredith, conveyed the legal estate by way of mortgage to Hall to secure the advance, and this mortgage, by virtue of several *mesne* conveyances, became ultimately vested in Powles, who took possession. Upon a bill afterwards filed by the heiress at law of Jones, it was held that Powles had a good security by virtue of the possession of the legal estate for the money due to her.

Doctrine stated by Gilbert.

In Gilbert's "Lex Prætoria" (*x*), the equitable right of a purchaser for valuable consideration is stated thus: "If B. obtains a conveyance of land from A. by fraud, and A. quits the possession to B., and B. sells the land to C. for valuable consideration *bonâ fide* and without notice, A. can never obtain the land against C., because the fraudulent conveyance with the quitting the possession transfers an interest, and that when C. has obtained an interest at law for his money *bonâ fide*, a court of equity ought not to take it from him."

Some cases to which rule applies.

It follows from what has been stated that if B. takes a conveyance or mortgage of the legal estate from A. under circumstances which would make the transaction impeachable in equity as against B., either by A. himself, or by some person for whom A. is a trustee, and B. subsequently conveys the legal estate to C. as a purchaser for valuable consideration, and without notice, either actual or constructive, of such circumstances, C.'s title cannot be impeached. Thus if A., being a mortgagee with a power of sale, sells to B. under circumstances which would enable A.'s mortgagor to set aside the sale as against B., and B. subsequently sells or mortgages to C., who has no notice of such circumstances, C. is protected by the possession of the legal estate. Again, if a purchase by B. from A. is liable to be set aside as between those parties on the ground that B. was A.'s solicitor, and B. previously

(*x*) Frauds, p. 287.

to any suit instituted for that purpose sells and conveys the legal estate to C., who has no notice, either actual or constructive, of the relation of solicitor and client existing between A. and B., it is conceived that C. in this case also has an indefeasible title (*y*).

Tacking.

The protection of the legal estate is not confined to cases where a purchaser or mortgagee acquires such legal estate at the time of his purchase or mortgage, or before he has notice of the prior incumbrance (*z*). Thus a third mortgagee, advancing his money without notice of a second mortgage, may, by paying off a first mortgagee who has the legal estate, and taking a transfer from him of such first mortgage, hold the property as against the second mortgagee until not only the first mortgage, but also the third is paid off; in other words, may tack (*a*) the two debts together, and thus, as it were, squeeze out the second (*b*). And it has lately been held that the rule applies where a third mortgagee obtains the legal estate from a first mortgagee without paying him off, *e.g.*, where the latter is satisfied with some other security which he holds for the debt (*c*).

Purchaser taking legal estate from express trustee with notice, not protected.

But a purchaser or mortgagee, who, after completing his purchase or mortgage, becomes aware that the legal estate is vested in a trustee upon express trusts, cannot protect himself against such trusts by taking a conveyance of the legal estate from the trustee: for by taking a conveyance with notice of the trusts, he himself becomes the trustee, and must not, to get a plank to save himself, be guilty of a breach of trust (*d*).

(*y*) See, accordingly, Bainbridge *v.* Browne, 18 C. D. 188.

(*z*) Stanhope *v.* Earl Verney, 2 Eden, 85; see also Willoughby *v.* Willoughby, 1 T. R. 763; Butler's note to Co. Lit. 390 b.

(*a*) The doctrine of tacking and protection by the legal estate, as explained in this Dissertation, does not apply to lands in Yorkshire since the passing of the Yorkshire Registries Act, 1884. See sect. 16, and p. 135, *supra*.

(*b*) March *v.* Lee, 1 Ch. Ca. 162; 2 Vent. 337; Churchill *v.* Grove, 1 Ch. Ca. 36; Edmunds *v.* Povey, 1 Vern. 187; Bovey *v.* Skipwith, 1 Ch. Ca. 201; Peacock *v.* Burt, 4 L. J. (N. S.) Ch. 33; Spencer *v.* Pearson, 24 Beav. 266; Bates *v.* Johnson, 1 John. 304.

(*c*) Taylor *v.* Russell, (1891) 1 Ch. 8.

(*d*) Saunders *v.* Dehew, 2 Vern. 271; Allen *v.* Knight, 5 Hare, 272; see also Willoughby *v.* Willoughby,

Third mortgagee taking a conveyance from first mortgagee who has been previously paid off, not protected.

And the rule is the same where the trust is a constructive one. Thus if a first mortgagee, after his mortgage has been satisfied, conveys the legal estate to a third mortgagee, and at the time of such conveyance both parties are aware of a second mortgage, the third mortgagee, though he had no notice of the second mortgage when he advanced his money, does not by such transaction obtain priority. The first mortgagee, having become a trustee for the second, commits a breach of duty in conveying the legal estate to the third, who, being aware of such breach of duty, will not be allowed to profit thereby (*e*).

Conveyance being a breach of trust, no protection, even though grantee has no notice of the trust, *semble*.

And in some recent cases the opinion of the Court seems to have been, that a purchaser or mortgagee who at the time of completion acquires a defective title, cannot avail himself of a subsequent conveyance of the legal estate from a person who being a trustee for another commits a breach of trust in so conveying, even if the person taking the conveyance has no notice of the trust (*f*).

How far protection of legal estate applies to transferee of a mortgage.

In the application of the doctrine as to the protection afforded by the legal estate to the transferee of a mortgage, it must be borne in mind that a mortgage is regarded in equity as a mere security for a debt, and consequently that the interests of persons claiming under a mortgage in the land comprised therein are regulated by their interests in the debt for which the land is a security.

Transferee of a mortgage can be in no better position than transferor.

If, then, B., by fraud, induces A. to execute to him a mortgage, no money passing from B. to A., and no debt being in fact contracted, and if B., without the concurrence of A., subsequently transfers such mortgage to C. for valuable consideration, it is conceived that C. is in no better position than B., for as no debt was due to B., no debt passes to C.; and as the land was not the subject of the

1 T. R. 763; Maundrell *v.* Maundrell, 10 Ves. 246; *Ex parte* Knott, 11 Ves. 609; Mumford *v.* Stohwasser, L. R. 18 Eq. 556; Harpham *v.* Shacklock, 19 C. D. 207; Ladbrook *v.* Passman, W. N. 1888, p. 156.

(*e*) See Bates *v.* Johnson, 1 John. 301; West London Commercial and Reliance Permanent Building Soc., 29 C. D. 954.

(*f*) Mayfield *v.* Burton, L. R. 17 Eq. 15; Mumford *v.* Stohwasser, *ib.* 18 Eq. 557.

transaction, but the debt for which the land was only a security, C. cannot retain the land as against A. where there is no debt (*g*). Again, if A. mortgages land to B., who knows that A. is a trustee without a power to mortgage, or having such power is improperly exercising it, no debt is created as against the land and the beneficial owners of it. If, then, B. afterwards transfers such mortgage to C. without the concurrence of A., C., though without notice of the trust, can only stand in the shoes of B., and will not be allowed to retain the land against the *cestuis que trust* of A. Thus, in *Burt* v. *Trueman* (*h*), Pemberton, the trustee of a will with a power to raise money by mortgage for payment of debts, deposited the title deeds relating to lands of the testator with Holloway, under circumstances which, in the opinion of the Court, constituted notice to him that the money was raised for Pemberton's private purposes. Afterwards Holloway transferred his equitable security to Trueman, who subsequently applied to Pemberton for, and obtained, a legal mortgage in pursuance of the original agreement. Trueman had no notice, either when he advanced his money or took the legal mortgage, of the improper application of the original advance, and nevertheless the mortgage in his hands was held to be invalid as against the *cestuis que trust* under the will. The Vice-Chancellor observed that the equitable security was certainly bad in the hands of Holloway against the *cestuis que trust*. "Suppose, then," he said, "that a bill had been filed by the present plaintiff against Trueman, could he have maintained that mortgage, he standing simply in the shoes of Holloway? Trueman could not have maintained it more than Holloway, and if the security was one that he could not maintain at first, the taking the legal estate merely in consequence of a prior contract did not enable him to do so. It is not necessary to consider what would be the position of Trueman if he had been

Burt *v.* Trueman.

(*g*) See Parker *v.* Clarke, 30 Beav. 54; Rolt *v.* White, 31 Beav. 520.

(*h*) 6 Jur. (N. S.) 72. See also Parker *v.* Clarke, 30 Beav. 54; Adsett *v.* Hives, 33 Beav. 52.

asked to advance money for the first time to Pemberton, on the representation that Pemberton wanted the money to pay debts." It will be observed that in this case no debt was created by the transaction with Holloway as against the land and its beneficial owners; no debt, therefore, passed by the transfer to Trueman, and the subsequent getting in of the legal estate was merely an acquisition of a further security in pursuance of the original contract for a debt which did not in fact exist.

Distinction where mortgagor joins in transfer, or mortgagee sells under power of sale.

But where the mortgagor joins in the transfer of a mortgage, it is conceived that the transaction is to be treated as a new one, and that the transferee is not affected by any equitable right binding the original mortgagee, of which he (the transferee) has not himself notice. Again, if B., a mortgagee with notice of a prior trust or incumbrance, sells under a power of sale in the mortgage deed to C., who has no notice, it is conceived that as the land which is the subject of the transaction passes to C. by the deed, C. can hold the land free from any right of redemption on the part of the prior *cestui que trust* or incumbrancer.

Where neither party has legal estate, priorities of incumbrances are according to their dates.

It will be borne in mind that the possession of the legal estate is essential to give to a purchaser or mortgagee priority over trusts or incumbrances of which he has no notice; so that where the interests of all of several incumbrancers are equitable only, either by reason of the legal estate being outstanding, or from the property being of an equitable nature, then if the equities of all parties are in other respects equal, *i.e.*, if there are no special circumstances entitling one of the parties in preference to another to the assistance of the Court, the incumbrances will rank according to their order of date (*i*). In such a case the rule *qui prior est tempore potior est jure* applies. Thus, if a mortgagee of an equitable estate, who is in fact a trustee, though not so expressed in the mortgage deed, fraudulently transfers the mortgage to another for valuable consideration, the transferee will take subject to the

(*i*) Brace *v.* Duchess of Marlborough, 2 P. W. 493, 7th Resolution.

claims of the *cestuis que trust*, assuming that the latter have not been guilty of negligence (*k*). And there can be no tacking where all the incumbrances are equitable, so that a third mortgagee gains no advantage by taking a transfer of the first mortgage, where the legal estate is outstanding.

But if one party has by negligence conduced to a fraud, he will be postponed.

But if the party whose right is prior in time has, by his own negligence, conduced to the fraud committed on the other, he will be postponed, as in such case his equity is inferior. Thus, where a vendor conveyed land, and signed a receipt for the purchase-money, which, however, he did not receive, and the title deeds were delivered to the purchaser, who afterwards deposited them by way of equitable mortgage, the equitable mortgage was held to have priority over the vendor's lien (*l*). Again, when A. was induced by his solicitor to execute a deed, which was in fact a conveyance to the solicitor as on a sale, and to sign the receipt for the purchase-money indorsed on the deed, trusting to his statement that the deed was a mere form, and afterwards the solicitor deposited the title deeds with B. by way of equitable mortgage to secure a debt, B. was held to have priority over A. (*m*). It was argued that the deed, having been executed by A. under a misapprehension as to its contents, was a nullity, and some decisions of Stuart, V.-C., were cited in support of this view (*n*); but the Court considered that a man who signs a deed negligently cannot treat it as void as against a third person, who innocently, and without any negligence on his part, acts on the deed so signed, and that a man who chooses to trust implicitly to his agent ought to suffer, rather than the stranger who deals with the agent.

First mortgagee may not tack for further advances after notice of a second mortgage.

Before leaving the subject of tacking it may be stated that if a mortgage is made to secure a specific sum and future advances, and such mortgage is followed by a second incumbrance, the first mortgagee would

(*k*) Cory *v.* Eyre, 1 De G. & J. 149.

(*l*) Rice *v.* Rice, 2 Drew. 73.

(*m*) Hunter *v.* Walters, L. R. 7 Ch. 75.

(*n*) Vorley *v.* Cooke, 1 Giff. 230; Ogilvie *v.* Jeaffreson, 2 Giff. 353.

not be entitled to priority in respect of further advances made by him after notice of the second mortgage, although the second mortgage was made with notice of the prior mortgage (*o*).

Notice, actual and constructive.

Notice may be either actual or constructive. As to *actual* notice nothing need be said; but a purchaser or mortgagee is often chargeable with the consequences of notice from the existence of circumstances which render it his duty to make inquiries, in which case he is deemed to have knowledge of the facts to which those inquiries ought to lead him. Thus notice that the title deeds are in the hands of a third party is notice of his charge on the property. When a purchaser is referred for information to another, it is his duty to make the proper inquiries of such person, and he would be held responsible for the information he might have gained by making the inquiries (*p*). Notice of a particular instrument is notice of all instruments and facts which may be disclosed by that deed (*q*).

Purchaser should require vendor or lessor to deduce a reasonable title.

It is the duty (*r*) of a purchaser or mortgagee to require the vendor or mortgagor to deduce and show a reasonable title, and if he neglects to do so he will be affected with constructive notice of the contents of any deed forming part of the chain of title. It has been held that this rule has not been altered as regards leaseholds by the Vendor and Purchaser Act, 1874, but that a purchaser of leaseholds is in the same position with regard to notice as he would have been in if before the Act he had agreed not to inquire into the lessor's title (*s*).

(*o*) Shaw *v.* Neale, 19 Jur. 666; Hopkinson *v.* Rolt, 9 H. L. Cas. 514; Bradford Banking Co. *v.* Briggs, 29 C. D. 149.

(*p*) Wason *v.* Wareing, 15 Beav. 151.

(*q*) Coppin *v.* Fernyhough, 2 Br. C. C. 291; Eland *v.* Eland, 1 Beav. 235; Davies *v.* Thomas, 2 Y. & C. 234; 16 Beav. 388.

(*r*) The term "duty," as here used, "does not mean that a purchaser or mortgagee owes any duty to the possible holder of an adverse interest. It merely means the course which a man dealing *bonâ fide* in the proper and usual manner for his own interest ought to follow, with a view to his own title and his own security. If he does not follow that course, the omission of it, in the absence of explanation, is evidence of a design, inconsistent with *bonâ fide* dealing, to avoid knowledge of the true state of the title." (Per Lord Selborne, in Agra Bank *v.* Barry, L. R. 7 H. L. 157.)

(*s*) Patman *v.* Harland, 17 C. D.

But as regards property situate in a register county, a purchaser who has searched the registry is not bound to inquire whether there are any unregistered deeds (*t*). Search in register county.

Notice of a charge is notice of everything auxiliary to it; but if the same deed contains two charges of two distinct properties, a notice given of one charge is not notice of the other (*u*). Notice of charge.

As a general rule, a person is deemed to have notice of all facts which come to the knowledge of his solicitor in the course of the same transaction (*x*); but as the doctrine is founded on the presumption that a solicitor communicates such facts to his client, it does not apply where the fact with notice of which the client is sought to be charged is one which the solicitor would certainly conceal, as, *e.g.*, a fraudulent act of his own (*y*). When the mortgagor is himself a solicitor and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor will be considered the agent of the mortgagee in the transaction (*z*). Notice to solicitor notice to client.

Section 3 of the Conveyancing Act, 1882 (which is made to apply to purchases made either before or after the commencement of the Act), provides that a purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless (1) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or (2), in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would What notice purchaser is and is not to be affected by.

353. It seems a strange doctrine that a purchaser is to be deemed guilty of negligence for not negativing the operation of an Act of Parliament.

(*t*) Agra Bank *v.* Barry, L. R. 7 H. L. 135.

(*u*) *Re* Bright's Trusts, 21 Beav. 430.

(*x*) Lowther *v.* Carlton, 2 Atk. 242; Worsley *v.* Earl of Scarborough, 3 Atk. 392; Hiern *v.* Mill, 13 Ves. 120.

(*y*) Kennedy *v.* Green, 3 M. & K. 699. But see the observations of Chelmsford, L. C., in Espin *v.* Pemberton, 3 De G. & J. 554, as to the notice supposed to be received by a client through his solicitor; and also see Bolland *v.* Hart, 6 Ch. Ap. 678.

(*z*) Hewitt *v.* Loosemore, 9 Hare, 449; Espin *v.* Pemberton, 4 Drew. 333.

have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section does little more than express the existing equitable doctrine of notice, and would not, it is apprehended, protect a purchaser when he has entered into a contract under which he is expressly or (assuming *Patman* v. *Harland* to be good law) by statute precluded from calling for the title previous to a particular date.

Priority, how affected by non-possession of deeds.

Cases have frequently arisen in which it is sought to postpone a legal mortgagee not holding the title deeds to a prior or subsequent equitable mortgagee holding them, on the ground of negligence on the part of the former. It is settled that non-possession of the deeds will not deprive the legal mortgagee of his priority, unless it appears that he has omitted to obtain them, or has parted with the possession of them under circumstances from which the Court will infer fraud or negligence so gross as to be evidence of connivance in fraud (*a*). If, for instance, the legal mortgagee has completed without making an inquiry about the deeds, or has given them up to the mortgagor without asking for what purpose they are required, such conduct, if unexplained, will be considered as gross negligence tantamount to fraud, and he will be postponed (*b*). But if he has inquired for the deeds, and his omission to get them, or his subsequent giving them up to the mortgagor, has arisen from misrepresentation on the part of the latter, by which he has been deceived, or is otherwise explainable, *e. g.*, if he has been told that the deeds are temporarily mislaid, and will be delivered to him when found (*c*); or if a

Not lost, unless there is fraud or gross negligence tantamount to fraud.

Gross negligence will be imputed where there is no inquiry for deeds.

Secus, if any reasonable excuse is given.

Instances where priority not lost.

(*a*) Hewitt *v.* Loosemore, 9 Hare, 449; Northern Counties, &c. Co. *v.* Whipp, 26 C. D. 493; Lloyds Banking Co. *v.* Jones, 29 C. D. 221; Manners *v.* Mew, 29 C. D. 721; Bickerton *v.* Walker, 31 C. D. 151; Farrand *v.* York Banking Co., 40 C. D. 182.

(*b*) Worthington *v.* Morgan, 16 Sim. 547; Clarke *v.* Palmer, 21 C. D. 124.

(*c*) Hewitt *v.* Loosemore, *ubi supra;* Espin *v.* Pemberton, 4 Drew. 33.

packet has been given to him, represented as containing all the deeds, whereas in fact it contains some only, and relying on the representation he has not examined the packet (*d*); or if he has asked for certain deeds and has been told that they do not affect the property (*e*); or if he has been asked to lend a deed to the mortgagor for some innocent purpose, and has not left it with him longer than is consistent with that purpose (*f*); or if a solicitor has in his hands money belonging to his client, invests it on a mortgage in his own name, and afterwards fraudulently deposits the deeds with a third party (*g*), in all these cases fraud or gross negligence will not be imputed, and the priority will not be lost.

Mortgagee authorizing mortgagor to raise money by means of deeds will be postponed, though authority is exceeded.

If a mortgagee gives up the deeds to the mortgagor for the purpose of enabling him to raise money on them, but makes certain conditions, *e.g.*, that a limited sum only shall be raised, or that the second mortgagee shall be informed of the prior security, and the mortgagor transgresses the conditions by borrowing a larger sum than was agreed on (*h*), or by concealing the first mortgage (*i*), the first mortgagee will be postponed to the second one, not on the ground of fraud, but because having authorized the mortgagor to raise money by means of the deeds, he cannot, as against a person who makes an advance on the faith of the possession of the deeds, insist that the authority has been exceeded.

Mere carelessness will not deprive legal mortgagee of priority.

Mere carelessness or want of prudence from which fraud, or connivance in fraud, cannot be inferred, is not sufficient ground for postponing a legal mortgagee. Thus in a case where the manager of a company mortgaged his own property to the company, and after-

(*d*) Colyer *v.* Finch, 5 H. of L. Cases, 905; Hunt *v.* Elmes, 28 Beav. 631; Roberts *v.* Croft, 2 De G. & J. 1; Ratcliffe *v.* Burnard, L. R. 6 Ch. 652; Dixon *v.* Muckleston, L. R. 8 Ch. 155.

(*e*) Jones *v.* Smith, 1 Ph. 240.

(*f*) Martinez *v.* Cooper, 2 Russ. 198; Waldron *v.* Sloper, 1 Drew. 193.

(*g*) *In re* Richards, 45 C. D. 589.

(*h*) Perry Herrick *v.* Attwood, 2 De G. & J. 21.

(*i*) Briggs *v.* Jones, L. R. 10 Eq. 92.

wards abstracted the title deeds from the company's safe by means of a key, which was entrusted to him as manager, and then executed a mortgage to another person, and delivered to him the deeds, it was held that the company had not lost their priority (*k*).

Whether, as between two equitable mortgagees, the amount of negligence necessary to postpone the one who is prior in time is the same as is required to postpone a legal mortgagee to an equitable one, seems doubtful (*l*).

Consequence of not giving notice on assignment of choses in action, &c.

Where the subject of an assignment is a chose in action or personalty vested in a trustee, it is the duty of the assignee to give notice to the debtor or to the trustee, as the case may be, and, if he neglects to do so, he will be postponed to a subsequent assignee for value who takes this precaution.

But this doctrine does not apply to real estate. A mortgagee of an equitable interest in land is not bound to give notice to the owner of the legal estate, and will not be postponed to a subsequent mortgagee of the equitable interest who has given notice (*m*).

Legal choses in action may now be absolutely assigned at law.

As regards a legal chose in action, it is provided by the Judicature Act, 1873 (*n*), that any absolute assignment by writing, under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been, effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good

(*k*) Northern, &c. Co. *v.* Whipp, 26 C. D. 482; see also National Provincial Bank of England *v.* Jackson, 33 C. D. 1.

(*l*) Farrand *v.* Yorkshire Banking Company, 40 C. D. 182; Taylor *v.* Russell, 1891, 1 Ch. 8.

(*m*) Union Bank *v.* Kent, 39 C. D. 238.

(*n*) 36 & 37 Vict. c. 66, s. 25 sub-s. 6.

discharge for the same, without the concurrence of the assignor. There is a proviso that if the debtor, trustee, or other person liable in respect of such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead, or he may pay the same into Court, under the Trustee Relief Acts.

But an assignment by way of charge is excepted.

It will be observed that the above enactment does not apply to an assignment by way of charge, which term has been held to include an assignment subject to a proviso for redemption (*o*), and also an assignment to a trustee in trust for the assignor (*p*).

As the interest of a *cestui que trust* is not a legal chose in action, it is difficult to see how the above enactment can apply to a trustee, and why the word "trustee" is used.

The subject of notice on assignments of choses in action and equitable interests is further discussed in the next section.

IX. *Some precautions to be observed by a person advancing money on mortgage.*

Investigation of title and searches for incumbrances.

Value of security.

A mortgagee should make the same investigation of the title and searches for incumbrances as a purchaser. He should also take care to satisfy himself that the property is of sufficient value. The ordinary rule is, that the money advanced should not exceed two-thirds of the value of the property if freehold lands of inheritance, but if the principal part of the property consists of buildings, not more than half its value should be advanced on it (*q*).

(*o*) Tancred *v.* Delagoa Bay Company, 23 Q. B. D. 239, disapproving of Nat. Prov. Bank *v.* Harle, 6 Q. B. D. 626. See also Burlingson *v.* Hall, 12 Q. B. D. 347.

(*p*) Comfort *v.* Betts, 1891, 1 Q. B. 737.

(*q*) As to the precautions to be taken by trustees advancing money with respect to the value of the property, see the Dissertation on "Trustees" in vol. 2.

Risk attending a second mortgage.

It is evident, from what has been stated in the former part of this Dissertation, that a person lending money on the security of an equity of redemption incurs some risk. For example, the mortgagor may have previously made equitable mortgages in addition to the first mortgage, all which equitable mortgages will have priority, on the principle of *qui prior est tempore potior est jure*. Again, if the mortgagor should, after executing such second mortgage, make a third mortgage, concealing from the third mortgagee the existence of the second mortgage, the third mortgagee may, by paying off the first mortgage, gain a priority over the second, upon the principle of tacking above explained.

Precautions to be taken by a person lending money on a second mortgage.

If, notwithstanding the above objections, the weight of which depends in each case upon the circumstances, a person agrees to lend money on a second mortgage, he should inquire of the first mortgagee how much is due upon his security; and when the second mortgage is completed, notice of it should be given to the first mortgagee. Such notice will prevent him from tacking any subsequent advance which he may make on the security of the property, although the original mortgage may be expressly made to cover future advances (*r*).

On mortgages of personalty notice should be given to trustees.

Where the subject of the mortgage is a debt, or personalty vested in trustees, or a policy of assurance, notice of the mortgage should be given to the debtor or trustees, or assurance office, as the case may be; and if the subject of the mortgage is money to arise from the sale or mortgage of land, notice should be given to the trustees in whom the duty or power of selling or mortgaging is vested, although the time of sale or mortgaging may not have arrived (*s*). If such notice is not given, the mortgagee will be postponed to a subsequent mortgagee who advances his money

(*r*) Rolt *v.* Hopkinson, 3 De G. & J. 177; Bradford Banking Co. *v.* Briggs, 29 C. D. 19.

(*s*) Lee *v.* Howlett, 2 Kay & Joh. 501; Foster *v.* Cockerell, 3 Cl. & Fin. 456; *Re* Hughes' Trusts, 2 H. & M. 89; see also Bridge *v.* Beadon, L. R. 3 Eq. 664.

without notice of the prior mortgage, and himself gives due notice of his own security (*t*).

Notice is also necessary as against the debtor or trustee himself, for payment to the original creditor will be a satisfaction of the debt, notwithstanding that the creditor may have assigned it to another for a valuable consideration, if the debtor has no notice of such assignment; and if the debtor has been released in a general settlement of accounts, instead of actually paying the money, the release is equally effectual (*u*).

Notice necessary to prevent debtor from paying original creditor.

Information given casually in the course of conversation, even by the assignee himself, would not amount to a notice (*x*). But a notice given by the assignor formally and distinctly, or in such a manner as to fix the person to whom the notice is given with the consequences of acting contrary to the knowledge he has thus acquired, will be effective, although the assignee himself has given no notice (*y*).

Notice should be a formal one—trustee not bound by information casually obtained.

It is apprehended that the rule as to the necessity of notice in order to give priority applies to trustees in bankruptcy under the Bankruptcy Act, 1883, so that a trustee in bankruptcy omitting to give notice to the debtor or trustee of the fund, will be postponed to a subsequent assignee for value, who, having no notice of the bankruptcy, gives notice of his assignment (*z*).

Notice by trustee in bankruptcy necessary.

Before advancing his money on the security of a chose in action or equitable interest in a fund vested in trustees, a prudent mortgagee will inquire of the debtor or trustee, and, in case of a policy of assurance, of the assurance office, whether notice has been received of any prior incumbrance. If, however, he neglects

Intended mortgagee should inquire of trustee as to prior incumbrances.

(*t*) Loveridge *v.* Cooper, 3 Russ. 1; *In re* Freshfield's Trust, 11 C. D. 198.

(*u*) Stocks *v.* Dobson, 4 De G. M. & G. 11.

(*x*) North British Co. *v.* Hallett, 7 Jur. (N. S.) 1263; Edwards *v.* Martin, L. R. 1 Eq. 121.

(*y*) *Ex parte* Agra Bank, L. R. 3 Ch. 555; Lloyd *v.* Banks, 5 Ch. Ap. 488.

(*z*) Palmer *v.* Locke, 18 C. D. 381; *In re* Barr's Trust, 4 K. & J. 219; *In re* Atkinson, 2 De G. M. & G. 140. The case of *In re* Bright's Settlement, 13 C. D. 413, was decided on the construction of the Act of 1849, which contained negative words not in the Act of 1883.

to make such inquiry, but gives notice of his own security, he will not, on account of his neglect to inquire, be postponed to a prior incumbrancer who has given no notice, because the inquiry, if made, would not have given him the necessary knowledge.

Trustee not bound to answer inquiries.

It has been decided that a trustee is not bound to answer inquiries made by a person about to advance money to the beneficiary, and that if he does answer them honestly to the best of his belief, he is not liable should it turn out afterwards that he has forgotten an incumbrance of which he had received notice, unless he has expressed himself so as to create an estoppel (*z*).

Notice of assignment before bankruptcy.

Previously to the Bankruptcy Act, 1869, a chose in action, which was the subject of a mortgage, of which no notice had been given to the debtor or trustee, was, in the event of the bankruptcy of the mortgagor, deemed to be within his order and disposition, with the consent of the true owner, and saleable accordingly in the bankruptcy (*a*).

Provision of Bankruptcy Act, 1883, as to things in action.

Under the existing bankruptcy law, things in action, other than debts due or growing due to the bankrupt in the course of his business, are not to be deemed goods within his order and disposition (*b*). And the term "things in action" includes policies of assurance (*c*), a share in a partnership business (*d*), and shares or debentures of incorporated or joint-stock companies (*e*).

Notice to one of several trustees sufficient.

It is not *necessary* to give notice to more than one of the trustees, so long as the circumstances of the case remain unaltered by the death of that trustee, or his ceasing to be a trustee or otherwise (*f*).

Effect of notice to assignor, being himself a trustee.

Where the assignor was himself one of the trustees, as well as one of the *cestuis que trust*, it was held by Vice-Chancellor Kindersley, that a notice to such

(*z*) Low *v.* Bouverie, (1891) 3 Ch. 82.

(*a*) Ryall *v.* Rowles, 1 Ves. sen. 348; Williams *v.* Thorp, 2 Sim. 257; Re Hughes' Trusts, *ubi supra*.

(*b*) 46 & 47 Vict. c. 52, s. 44.

(*c*) *Ex parte* Ibbetson, 8 C. D. 519.

(*d*) *In re* Bainbridge, 8 C. D. 218.

(*e*) Colonial Bank *v.* Whinney, 11 H. L. Cas. 426; *Ex parte* Pryce, 4 C. D. 685.

(*f*) Smith *v.* Smith, 2 Cro. & M. 231; Tenison *v.* Ramsbottom, 2 Keen, 35; Meux *v.* Bell, 1 Hare, 73, 97; Bridge *v.* Beedon, L. R. 3 Eq. 664.

assignor was not sufficient, on the ground that he had a motive for concealing the prior assignment from any person to whom he might make a second assignment (*g*); but in a more recent case (*h*), where on a mortgage by a husband and wife of the wife's reversionary interest, notice was given to the husband, he being one of the trustees of the fund, it was held by Lord Westbury that the notice was sufficient, as in dealing with a trustee it was to be assumed that he would deal honestly. It may, therefore, be considered settled, that the fact of the assignor being himself the trustee does not affect the validity of the notice given to him.

Notice should be given to all the existing trustees.

It is, however, in all cases prudent to give notice to all the existing trustees; for in case notice of an incumbrance is given to one only of several trustees, and the trustee to whom such notice is given dies, and after his death a second incumbrancer, not having actual knowledge of the first incumbrance, gives notice of his security to the surviving trustees, the second incumbrancer would by his notice gain a preference; for in the altered circumstances which the death of the trustee who alone had notice of the first incumbrance introduces, inquiry of all the existing trustees would not have led the inquirer to a knowledge of the previous incumbrance.

Notice to solicitor of trustees not sufficient.

Notice to the solicitor of the trustees is not sufficient, unless such notice is communicated to the trustees either verbally or in writing (*i*).

When reversionary fund is subject of settlement.

If a reversionary fund is made the subject of settlement, and a *cestui que trust* under such settlement should charge or otherwise dispose of his share, it will be prudent for the assignee to give notice of the assignment, not only to the trustees of the settlement, but also to the trustees of the document under which the settlor became entitled.

30 & 31 Vict. c. 144.

The 30 & 31 Vict. c. 144, provides that no assignment shall confer on the assignee a right to sue for the

(*g*) Brown *v.* Savage, 4 Drew. 635.

(*h*) Willes *v.* Greenhill, 29 Beav. 387, 393; 31 L. J. (N. S.) Ch. 1; *In re* Lewer, 1 C. D. 101; Brown's Trusts, 5 Eq. 88.

(*i*) Saffron Walden Benefit Building Soc. *v.* Rayner, 14 C. D. 406; *ib.* 696.

policy moneys until a written notice in the form prescribed by the Act is given to the company at their principal place of business, and that the date on which such notice is received shall regulate the priority of all claims under any assignment (*l*).

Effect of notice before fund has come into existence.

Notice before a fund has come into existence, to a person who is merely a potential future trustee, is ineffectual. Thus notice of a covenant to pay to covenantees the proceeds of a commission in the army, given to the army agent before a sale was actually made, was held to be ineffectual (*m*).

New trustees not bound to inquire of old trustees whether they have received notice of incumbrances.

New trustees of trust funds in settlement are not bound to inquire of the old trustees whether they have received any notices of dealings by the *cestuis que trust.* If, therefore, an assignee or incumbrancer of a *cestui que trust* gives notice to the then trustees, and the latter retire and do not pass on the notice to the new trustees, the assignee or incumbrancer runs the risk of having the trust property distributed without reference to his claim (*n*).

Notice in lieu of *distringas.*

Where the subject of a mortgage is the beneficial interest of the mortgagor in stock in the funds, or stock or shares in a public company, the mortgagee should give to the Bank of England, or to the company, the notice substituted for a *distringas* by the Rules of the Supreme Court, 1883, Order 46.

Stop order.

Where money or stock is in Court, the mortgagee should obtain a stop order (*o*).

X. *Transfers of mortgages and reconveyances.*

Usual form of transfer of mortgage.

The usual form of a simple transfer of mortgage is —1st, an assignment of the mortgage debt; and, 2ndly, a conveyance of the property, which is the subject of the mortgage, to the transferee, subject to the equity of redemption subsisting under the mortgage deed.

Power of attorney to sue in name of

As, until lately, the mortgage debt, as secured by the mortgagor's covenant, was not assignable at law,

(*l*) Sects. 2, 3.

(*m*) Buller *v.* Plunkett, 1 J. & H. 441; Somersett *v.* Cox, 33 L. J. Ch. 490.

(*n*) Phipps *v.* Lovegrove, L. R. 16 Eq. 80.

(*o*) See Mutual Life Assurance Soc. *v.* Langley, 26 C. D. 686.

it was usual and proper to insert in the transfer deed a power of attorney enabling the transferee to sue for the debt in the name of the transferor; but since it is now provided by the Judicature Act, that an assignment of a debt shall be effectual in law, if notice is given to the debtor (*p*), a power of attorney is no longer necessary.

transferor no longer necessary.

A person advancing money on the security of a transfer of a mortgage should make the mortgagor a party to the deed, if his concurrence can be obtained, for the purpose of admitting that the mortgage-money remains due. In the absence of such admission the transferee will take subject to the state of the account between the mortgagor and the original mortgagee and to all equities subsisting between them.

Mortgagor should be made party to transfer, to admit the amount due.

If a mortgagee transfers a mortgage without the concurrence of the mortgagor and without calling on him to redeem, he cannot add the costs of the transfer to the mortgage debt (*q*).

When costs of transfer cannot be added to mortgage debt.

If a further sum is at the time of the transfer advanced by the transferee to the mortgagor, it is usual to convey the property free from the old proviso for redemption, and subject to a new one with new covenants for payment, the old mortgage debt being at the same time transferred as a protection against mesne incumbrances (if any). Sometimes, however, the deed is made to take the form of an ordinary transfer, followed by a covenant creating a further charge for the new advance.

Form of deed where transferee makes a further advance.

The recent Act gives a statutory force to some short forms of transfer given in a schedule.

Statutory transfer.

Where copyholds are the subject of a mortgage, and there has been a conditional surrender of them to the mortgagee, but (as is usual) no admittance on such surrender, the ordinary and proper mode of effecting a transfer is for the mortgagor to make a new conditional surrender to the transferee, satisfaction being at the same time entered upon the old surrender.

Plan to be adopted on a transfer of mortgage of copyholds.

(*p*) 36 & 37 Vict. c. 66, s. 25, sub-s. 6.

(*q*) *Re* Radcliffe, 2 Jur. N. S. 379.

If, however, the concurrence of the mortgagor cannot be obtained, it is necessary, in order to vest the legal estate in the transferee, that the transferor should be admitted tenant on the original surrender, and should then surrender again to the transferee, subject to the mortgagor's right of redemption; but this proceeding would, in many cases, involve a heavy expense in the way of fines and fees to the lord and steward, and to avoid it a transferee may sometimes be advised to accept a declaration of trust by the transferor of the benefit of the original surrender.

Mortgagor entitled to a reconveyance on payment of mortgage debt.

Upon payment of principal, interest, and costs, the mortgagor is entitled to a reconveyance at his own expense of the mortgaged property. If the mortgage is of freeholds, and the mortgagee has died intestate before the 1st January, 1882, the legal estate will have descended on his heir, who, until a recent statute, would have been the proper person to reconvey; and if he was an infant, it would have been necessary to get a vesting order through the Court under the Trustee Act. By the Vendor and Purchaser Act, 1874 (*r*), it was enacted that the legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust. The Conveyancing Act, 1881, repeals the above clause in the Vendor and Purchaser Act, as regards all mortgagees dying after the 31st December, 1881, and provides, with respect to such mortgagees, that where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments is vested by way of mortgage in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve on his personal representative as if it were a chattel real (*s*).

Under Vendor and Purchaser Act legal personal representative could, on payment of all money secured by mortgage, reconvey.

Now, under Conveyancing Act, 1881, mortgaged estate vests in personal representative.

(*r*) Sect. 4.

(*s*) Sect. 30, sub-sect. 2. This sub-section has been repealed as to copyholds. See *supra*, p. 252.

It has been held that section 4 of the Vendor and Purchaser Act applies only to a reconveyance strictly so-called, *i.e.*, a reconveyance to the mortgagor or those claiming under him, but not to a transfer of the whole debt in consideration of the full amount paid by the transferee to the transferor (*t*), or to a sale under a power contained in the mortgage deed (*u*). The decision seems a narrow one, but the point is of little importance, having regard to the more comprehensive provision in the Act of 1881.

Sect. 4 of Vendor and Purchaser Act does not apply to a transfer or to a sale under a power.

In cases where the legal estate has descended on an infant, and the above enactments do not apply, it will be necessary to obtain a vesting order, or an order appointing a person to convey, under the "Trustee Act, 1850" (*x*).

Trustee Act, 1850.

Where a mortgagee becomes lunatic, a vesting order, or an order appointing a person to convey, must be obtained from the judge in lunacy (*y*).

Vesting order in case of lunatic mortgagee.

Where the mortgage is of copyholds, and the mortgagee has not been admitted, it is sufficient to enter up satisfaction on the Court rolls, and warrant for this purpose should be given to the steward. If he has been admitted, a surrender to the mortgagor will be necessary.

Where mortgage is of copyholds, warrant of satisfaction should be entered up, unless mortgagee has been admitted.

Where a mortgage of freeholds is for a term of years only, it is usual to have a surrender on the mortgage being paid off; but a receipt in full endorsed on the deed will have the same legal effect, as the term being satisfied by payment will cease.

Where mortgage is for a term, surrender usual, but not necessary.

The 15th section of the Conveyancing Act, 1881, enacts that where a mortgagor is entitled to redeem he shall have power to require the mortgagee, instead of reconveying and on the terms on which he would be bound to reconvey (*z*), to assign the mortgage debt and

Obligation on mortgagee if required to transfer instead of reconveying.

(*t*) See *In re* Spradbery's Mortgage, 14 C. D. 514.
(*u*) *In re* White's Mortgage, 29 W. R. 820.
(*x*) 13 & 14 Vict. c. 60, ss. 7, 8.
(*y*) 53 Vict. c. 5, s. 135.
(*z*) In a case where a tenant for life of the equity of redemption redeemed under a foreclosure judgment, it was held that he was not entitled as of right to require the mortgagee to transfer the mortgage to a third person. (Alderson *v.* Elgey, 26 C. D. 567.)

convey the mortgaged property to any third party, as the mortgagor directs; and the 12th section of the Conveyancing Act, 1882, declares that this right shall belong to and be capable of being enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance, but that a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and that, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

XI. *Stamps on mortgages and instruments relating to mortgages.*

Stamps on mortgages.

By the Stamp Act, 1891 (*a*), the following duties are imposed, viz.:—

Mortgage, bond, debenture, covenant (except a marketable security otherwise specially charged with duty), and warrant of attorney to confess and enter up judgment;

(1.) Being the only or principal or primary security (other than an equitable mortgage) for—

	£	*s.*	*d.*
The payment or repayment of money not exceeding £10	0	0	3
Exceeding £10 and not exceeding £25	0	0	8
„ 25 „ 50	0	1	3
„ 50 „ 100	0	2	6
„ 100 „ 150	0	3	9
„ 150 „ 200	0	5	0
„ 200 „ 250	0	6	3
„ 250 „ 300	0	7	6
„ 300			
For every £100, and also for any fractional part of £100, of the amount secured	0	2	6

(*a*) 54 & 55 Vict. c. 39, Schedule.

	£	s.	d.
(2.) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped;			
For every £100, and also for any fractional part of £100, of the amount secured . .	0	0	6
(3.) Being an equitable mortgage;			
For every £100, and any fractional part of £100, of the amount secured . . .	0	1	0
(4.) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment;			
For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear . .	0	0	6
And also where any further money is added to the money already secured . .	The same duty as a principal security for such further money.		
(5.) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured;			
For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured	0	0	6

The Act contains the following provisions as to stamps on mortgages, &c.:—

Meaning of "mortgage."

Sect. 86.—(1.) For the purposes of this Act the expression "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent

at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be.

And includes—

(*a.*) Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever: and

(*b.*) Any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured; and

(*c.*) Any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts, in full satisfaction thereof, or who exceed five in number: and

(*d.*) Any defeazance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security: and

(*e.*) Any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond accompanied with a deposit of title deeds for making a mortgage, wadset, or any other security or conveyance as aforesaid of any lands, estate, or

property comprised in the title deeds, or for pledging or charging the same as a security: and

(*f.*) Any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland: and

(*g.*) Any deed operating as a mortgage of any stock or marketable security.

(2.) For the purpose of this Act the expression "equitable mortgage" means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property.

Direction as to duty in certain cases.

Sect. 87.—(1.) A security for the transfer or retransfer of any stock is to be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, is to be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.

(2.) A security for the payment of any rentcharge, annuity, or periodical payments, by way of repayment or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid.

(3.) A transfer of a duly stamped security, and a security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is not to be charged with any duty by reason of its containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

(4.) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the *ad valorem* duty is to be charged on the surrender

or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court.

(5.) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the *ad valorem* duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is not to be charged with any higher duty than ten shillings.

(6.) An instrument chargeable with *ad valorem* duty as a mortgage is not to be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

Security for future advances, how to be charged.

Sect. 88.—(1.) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2.) Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made.

(3.) Provided that no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Exemption from stamp duty in favour of benefit building societies restricted.

Sect. 89. The exemption from stamp duty conferred by the Act of the Session held in the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage made after the thirty-first day of July one thousand eight hundred and sixty-eight, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds (*a*).

Fine for not stamping mortgage, transfer or reconveyance.

Under sect. 15 of the Act the person liable to pay the fine for not stamping a deed, is in the case of a mortgage the mortgagee, and in the case of a transfer of a mortgage or a reconveyance the transferee or the person redeeming the security.

Mortgages to building societies incorporated under Act of 1874 not exempt from stamp duty.

(*a*) The exemption conferred by the Act of 6 & 7 Will. 4, c. 32, applies only to those societies which are certified under that Act, and have not obtained a certificate of incorporation under the Building Societies Act, 1874 (37 & 38 Vict. c. 42). As to all societies incorporated under the Act of 1874, the former Act is repealed (sect. 7), and a mortgage to any such society is liable to stamp duty, whatever may be the amount secured thereby (sect. 41).

No. I.

OF FREEHOLDS TO ONE.

MORTGAGE *in* FEE *of* FREEHOLDS *to* ONE PERSON (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said

Covenant by mortgagor to pay principal and interest.

A. B. hereby covenants with the said C. D. to pay to him on the —— day of —— next, the sum of £—— with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents; and also so long after that day as any principal money remains due under these presents, to pay to him interest thereon after the same rate by equal half-yearly payments on the —— day of ——, and the —— day of ——(*b*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said

Mortgagor conveys to mortgagee, subject to proviso for redemption.

A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or

Covenant for insurance against fire.

them [AND the said A. B. hereby covenants with the said C. D. that he, the said A. B., his heirs and assigns, will at all times

(*a*) For a mortgage by a married woman, see Precedent No. XXI., *infra*.

(*b*) If the separate covenant to pay interest is omitted, the mortgagee will be entitled to recover interest from the day of default by way of damages, and the rate would be that fixed by the parties unless it exceeds £5 per cent.; in which case £5 per cent. only would be allowed. (*Re* Roberts, 14 C. D. 49.) Moreover, if there is no separate covenant, interest could only be recovered by calling in the principal.

OF FREEHOLDS TO ONE.

during the continuance of this security keep the messuage and buildings comprised herein insured against loss or damage by fire in the sum of £—— at least [or in a sum equal to three-fourths of the value thereof] in the —— Insurance Office, or in some other insurance office approved by the said C. D., his executors, administrators or assigns, and will on demand produce to him or them the policy of such insurance, and the receipt for every premium payable in respect thereof (*c*).] [AND IT IS HEREBY DECLARED that no [building] lease made by the said A. B., his heirs or assigns, of the said premises, or any part thereof, during the continuance of this security, shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, shall consent thereto in writing (*d*).]

Power of leasing conferred by Act on mortgagor not to be exercised without consent.

IN WITNESS, &c.

(*c*) This covenant will be inserted where a substantial part of the security consists of buildings. If the mortgagor does not perform the above covenant, the mortgagee is empowered to insure and to add the premiums to his mortgage-money. (*Supra*, pp. 460, 463.)

When part of security is buildings.

(*d*) The above clause negativing the statutory power of leasing is not to be inserted in every mortgage as a matter of course. If the property consists of a landed estate of ample value, it is reasonable and convenient that the mortgagor while he remains in possession should have all the powers necessary to the due management of the estate, including that of granting leases for twenty-one years to tenants, and as the rent must be a rack-rent, the mortgagee is not likely to be prejudiced. As regards house property in a town, the case is different, particularly if the security is scanty, and as a general rule a mortgagee may not unreasonably require that his consent should be asked before a lease is granted. This observation applies with additional force to the power of granting building leases for 99 years.

As to negativing statutory power of leasing.

Sometimes it may be desired to exclude building leases only, in which case the word "building" may be inserted before "lease" in the proviso in the text.

No. II.

STATUTORY MORTGAGE IN FEE.

STATUTORY MORTGAGE *in* FEE (*e*).

Parties.

THIS INDENTURE, made by way of statutory mortgage, the —— day of ——, 18—, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said C. D., of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagor and as beneficial owner, hereby conveys to the said C. D. All that, &c. (*parcels*) : To HOLD to and to the use of the said C. D. in fee simple, for securing payment on the —— day of ——, 189—, of the principal sum of £——, as the mortgage money with interest thereon at the rate of £—— per centum per annum.

IN WITNESS, &c.

Effect given by Act to statutory mortgage.

(*e*) This form of statutory mortgage is given in the 3rd Schedule to the Conveyancing Act, 1881, and it includes by virtue of the Act, first, a covenant with the mortgagee by the person therein expressed to convey as mortgagor, to the effect that the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money: and, secondly, a proviso to the effect that if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee, at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Observations on statutory forms.

It may be observed that the Act would have been more complete, if it had provided that in every conveyance made by way of mortgage a proviso for redemption should be implied, instead of making it necessary to use the word "statutory," and to adopt a special form in order to give a deed this operation. There is no objection to the use of the statutory mortgage form in simple cases, but where any additional provisions are desired, such additions fit in better to a deed in the form of Precedent No. I., and as the slight difference in length is hardly worth consideration, the statutory form is seldom adopted.

No. III.

MORTGAGE *in* FEE *with* PROVISIONS *for* REDUCING *the rate of* INTEREST *in case of* PUNCTUAL PAYMENT, *and for continuing the* LOAN *for a* TIME CERTAIN (*f*).

FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration, &c., the said A. B., &c. (*covenant to pay principal money and interest as in Precedent No. I., supra*, p. 506, *adding at the end of the covenant for payment of interest the following*): PROVIDED ALWAYS, that if and whenever a half year's interest for the said principal sum of £——, after the rate of £4 per cent. per annum, shall be paid upon the half-yearly day hereinbefore appointed for payment of interest, or within one calendar month thereafter, the same shall be accepted in lieu of and in satisfaction for the interest after the rate of £5 per cent. per annum, payable for that half year under the foregoing covenant in that behalf, but no claim for reduction shall be made under this clause in respect of any half-yearly payment of interest not made within the time aforesaid (*g*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., &c. (*Conveyance to mortgagee in fee simple subject to redemption, and covenant for insurance against fire and declaration as to leasing power where applicable, supra*, pp. 506, 507): PROVIDED ALWAYS, and it is hereby agreed and declared, that payment of the principal money hereby secured shall not be required until the expiration of —— years computed from the date hereof, if in the meantime every half-yearly payment of interest shall be made upon the day hereinbefore appointed for payment thereof, or within one calendar month thereafter [and the covenant of the said A. B. hereinbefore contained for keeping the said premises

Parties.

Proviso for reduction of interest in case of punctual payment.

Proviso that mortgagee shall not call in money for a term.

(*f*) It must not be supposed that where there is a provision for reducing the rate of interest on punctual payment, it is always accompanied by a provision for continuing the loan for a time certain, or *vice versâ*. The latter is only inserted where specially arranged for; the former is in very common use.

(*g*) See p. 448, *supra*.

FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

insured against loss or damage by fire shall be duly observed and performed]: But upon any sale made under the statutory power in that behalf before the expiration of the aforesaid period, the purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this proviso, and if a sale is made in breach thereof, the title of the purchaser shall not be impeached on that account: Provided also, and it is hereby further agreed and declared, that the said A. B., or any person claiming under him, shall not be at liberty to pay off the said principal sum of ——, or any part thereof, before the expiration of —— years, computed from the date of these presents, unless the said C. D., his executors, administrators, or assigns, shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said period without giving the usual six months' notice of intention so to do.

Proviso that purchaser shall not be affected by above proviso.

Proviso that mortgagor shall not pay off money before end of term.

In witness, &c.

No. IV.

FREEHOLDS TO SEVERAL.

MORTGAGE *in fee of* Freeholds *to persons* Lending Money *on a* Joint Account (*h*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c.,

Form in which mortgages to trustees are generally taken.

(*h*) Mortgages are generally taken in this form when the advance is made by trustees, it being important, for the sake of the title to the land, not to disclose the fact that the sum was advanced out of trust moneys. Such a disclosure would make the title to the money necessary to the title to the land by obliging a purchaser to see that the trustees were authorized to invest the trust money on real securities, and that the principal money when satisfied was paid into the hands of the persons or person who could give a good discharge for the same.

Effect of statement that money belongs to mortgagees on joint account, &c.

It is provided by sect. 61 of the Conveyancing Act, 1881, as to mortgages made after the commencement of the Act, that where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage, or of such an obligation, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one jointly, and not in shares, the mortgage money, or other money, or

E. F. of, &c., and G. H. of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D., E. F., and G. H., on or before the execution of these presents, out of moneys belonging to them on a joint account (the receipt whereof the said A. B. hereby acknowledges) THE said A. B. hereby covenants with the said C. D., E. F., and G. H., to pay to them on the —— day of —— next, the sum of £——, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents: AND also so long after that day as any principal money remains due under these presents to pay to them interest thereon after the same rate by equal half-yearly payments on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys unto the said C. D., E. F., and G. H., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., E. F., and G. H., in fee simple, PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them: [AND the said A. B. hereby covenants with the said C. D., E. F., and G. H., that he the said A. B., his heirs and assigns, will at all times during the continuance of this security keep the messuage and buildings comprised herein, insured against loss or damage by fire, in the sum of £—— at least [*or* in a sum equal to three-fourths of the value thereof], in the —— Insurance Office, or in some other insurance office approved by the said C. D., E. F., and G. H., their executors, administrators, or assigns, AND WILL on demand produce to them the policy of such insurance and the receipt for every premium payable in respect thereof] (*i*).

FREEHOLDS TO SEVERAL.

Mortgagor covenants to pay principal money and interest.

Mortgagor conveys to mortgagees in fee simple subject to proviso for redemption.

Covenant to insure against fire.

money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(*i*) See note (*c*), *supra*, p. 507.

FREEHOLDS TO SEVERAL.

Power of leasing conferred by Act on mortgagor not to be exercised without consent.

(*If it is wished to negative the leasing power generally or the power to grant building leases only, add as follows*): AND IT IS HEREBY DECLARED that no [building] lease made by the said A. B., his heirs or assigns, of the said premises, or any part thereof, during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall consent thereto in writing.

IN WITNESS, &c.

No. V.

TO SEVERAL FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

MORTGAGE *in* FEE *to persons* LENDING MONEY *on a* JOINT ACCOUNT *with* PROVISIONS *for* REDUCING *the* RATE *of* INTEREST *in case of* PUNCTUAL PAYMENT *and for* CONTINUING *the* LOAN *for a* TIME CERTAIN.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant by mortgagor to pay principal and interest, supra*, p. 511): PROVIDED ALWAYS, that if and whenever a half-year's interest for the said principal sum of £——, after the rate of £4 per centum per annum shall be paid upon the half-yearly day hereinbefore appointed for payment of interest, or within one calendar month thereafter, the same shall be accepted in lieu of and in satisfaction for the interest after the rate of £5 per cent. per annum payable for that half-year, under the foregoing covenant in that behalf, but no claim for reduction shall be made under this clause in respect of any half-yearly payment of interest not made within the time aforesaid: AND THIS INDENTURE ALSO WITNESSETH that, &c. (*Conveyance to mortgagees in fee, proviso for redemption, and covenant to insure against fire and declaration as to leasing power*

Proviso for reduction of interest in case of punctual payment.

if applicable, supra, pp. 511, 512): PROVIDED ALSO, and it is hereby agreed and declared, that payment of the principal money hereby secured shall not be required until the expiration of —— years, computed from the date of these presents, if in the meantime every half-yearly payment of interest shall be made upon the day hereinbefore appointed for payment thereof, or within one calendar month thereafter, [and the covenant of the said A. B. hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed]; BUT upon any sale, made under the statutory power in that behalf, before the expiration of the aforesaid period the purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this proviso, and if a sale is made in breach thereof the title of the purchaser shall not be impeached on that account: PROVIDED ALSO, and it is hereby further agreed and declared, that the said A. B., or any person claiming under him, shall not be at liberty to pay off the said principal sum of £——, or any part thereof before the expiration of —— years, computed from the date of these presents, unless the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said term without giving the usual six calendar months' notice of intention so to do.

TO SEVERAL FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

Provisions for continuing loan for time certain.

Purchaser not to be affected by above proviso.

Proviso that mortgagor shall not pay off money before end of term.

IN WITNESS, &c.

No. VI.

MORTGAGE *of* FREEHOLDS *to* ONE *with express* POWER *of* SALE (*k*).

OF FREEHOLDS, WITH EXPRESS POWER OF SALE.

THIS INDENTURE, &c. (*same as No. I. to end, adding as follows*): AND IT IS HEREBY AGREED AND DECLARED, that it shall

Power of sale.

(*k*) It is considered that the power of sale conferred by the Conveyancing Act is fully as advantageous to the mortgagee as that which was before the Act usually conferred by the deed. But as there may be circumstances in which a mortgagee would wish to have an express power, the above Precedent is retained.

OF FREEHOLDS, WITH EXPRESS POWER OF SALE.

be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his heirs or assigns, to sell the hereditaments and premises hereby conveyed, or any part or parts thereof, either together or in lots, and either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power to buy in at sales by auction, and to rescind contracts for sale, and to re-sell without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale, which the said C. D., his executors, administrators, or assigns, shall think proper: AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns, shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay and retain the costs and expenses attending such sale, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon the security of these presents, and shall pay the surplus (if any) to the said A. B., his heirs or assigns (*l*): PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of sale hereinbefore contained shall not be exercised unless default shall be made in payment of the said principal sum of £——, or the interest thereof, or some part thereof respectively, on the said —— day of ——, and also for the space of three calendar months next after a notice in writing requiring such payment shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to, or left at the usual or last known place of abode, in England or Wales, of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the land hereby conveyed, or some building thereon, or

Declaration of trusts of purchase-money.

Power to be exercised only in case of default in payment after notice, or of interest being in arrear.

Surplus moneys.

(*l*) The surplus moneys should be limited to the mortgagor, his heirs or assigns, because it is no part of a mortgage unnecessarily to deprive the lands of their character as real estate. If a sale under the power takes place after the death of the mortgagor, his heir, or his devisee of the land, would be entitled to the surplus proceeds, and the effect would be the same, although they may be directed by the mortgage deed to be paid to the mortgagor, his executors, administrators, and assigns. (*In re* Clark's Trust, 22 L. J. Ch. 230; Wright *v.* Rose, 2 Sim. & Stu. 323; Hardy *v.* Felton, 14 L. T. 346; Bourne *v.* Bourne, 2 Hare, 35; see and consider *In re* Underwood, 3 K. & J. 745.)

unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment; PROVIDED ALSO, and it is hereby declared that no purchaser upon any sale under the power hereinbefore contained shall be bound or concerned to see or inquire whether any such default has been made, or whether any such notice has been given, or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, or be affected by notice that no such default has been made, or notice given or left or affixed as aforesaid, or that the sale is otherwise unnecessary or improper: AND IT IS HEREBY DECLARED, that the power of sale hereinbefore contained may be exercised by any person or persons for the time being entitled to receive and give a discharge for the money owing upon the security of these presents. (*Declaration as to leasing power, if desired, supra*, p. 507.)

OF FREEHOLDS, WITH EXPRESS POWER OF SALE.

Purchaser not bound to inquire as to default, &c.

Power may be exercised by any person entitled to give a discharge for mortgage money.

IN WITNESS, &c.

No. VII.

MORTGAGE *of* COPYHOLDS (*m*).

COPYHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby covenants with the said C. D. that

Parties.

Covenant to pay principal and interest;

(*m*) Under this deed, the mortgagee will have a power of sale and all other powers conferred on a mortgagee by sect. 19 of the Conveyancing Act, 1881. But in order to pass the legal estate to the purchaser, he must be admitted under the conditional surrender, and then surrender to the purchaser.

COPYHOLDS.

to surrender copyhold parcels to mortgagee,

he the said A. B. will forthwith at his own cost surrender, or cause to be surrendered, into the hands of the lord of the manor of ——, according to the custom of the said manor, ALL, &c. (*copyhold parcels*) : To the use of the said C. D. in customary fee simple, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed, subject nevertheless to a condition for making void the said surrender if the said sum of £—— with interest thereon shall be paid according to the foregoing covenant in that behalf. (*Add covenant for insurance and declaration as to leasing power when applicable, supra*, p. 507.)

subject to condition for making void the surrender on payment on a day named.

IN WITNESS, &c.

No. VIII.

CONDITIONAL SURRENDER.

CONDITIONAL SURRENDER *of* COPYHOLDS.

THE MANOR *of* ——
in the county of —— } BE IT REMEMBERED, that on this —— day of ——, A. B. of, &c. (*mortgagor*), comes before L. M. of, &c., steward of the said manor, out of Court, and in consideration of the sum of £—— to the said A. B. paid by C. D. of, &c. (*mortgagee*), surrenders into the hands of the lord of the said manor, by the hands and acceptance of his said steward, according to the custom of the said manor, ALL, &c. (*here describe the copyhold parcels*), (To which premises the said A. B. was admitted tenant at a general Court held for the said manor on the —— day of ——) : To THE USE of the said C. D., and his heirs (*n*), at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed : SUBJECT NEVERTHELESS TO THIS CONDITION, that if the said A. B., his heirs, executors, or administrators, shall on the —— day of —— next pay to the said C. D., his executors, administrators or assigns, the sum of £——, with interest for the

Surrender of parcels

to mortgagee in fee

subject to condition for making surrender void on payment of mortgage debt and interest.

(*n*) Sect. 51 of the Conveyancing Act, 1881, applies only to a *deed*.

same after the rate of £—— per centum per annum, to be computed from the date of this surrender (being the same principal sum and interest as are secured by the covenant of the said A. B. contained in an indenture bearing even date herewith), then and in such case this surrender shall be void and of no effect, otherwise the same shall remain in full force and virtue. CONDITIONAL SURRENDER.

This surrender was taken and accepted the day and year above written by me.

Signed L. M. (*Steward*),
Steward of the Manor.

No. IX.

MORTGAGE *of a* LEASEHOLD MESSUAGE *by* DEMISE.

LEASEHOLDS BY DEMISE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture of lease dated the —— day of ——, and made between G. H. of, &c., of the one part, and the said A. B. of the other part: ALL that messuage or tenement, &c. (*parcels as contained in the lease*), were demised unto the said A. B., from the —— day of —— then last past for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed, including a covenant to insure the said premises against loss or damage by fire, in the joint names of the lessor and lessee, in the sum of £—— at least: AND WHEREAS the said C. D. has agreed at the request of the said A. B. to lend to him the sum of £—— upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges) the said A. B. hereby

Parties.

Recite indenture of lease.

Agreement for loan.

LEASEHOLDS BY DEMISE.

covenants (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said A. B., as beneficial owner, hereby demises unto the said C. D. THE messuage and premises comprised in the said indenture of lease: TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of —— years granted therein by the said indenture (except the last day of the said term): PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the demise hereby made shall be void: AND the said A. B. hereby covenants with the said C. D., that he the said A. B., his executors, administrators, and assigns, will at all times during the continuance of this security keep the said messuage and premises insured against loss or damage by fire, in the sum of £—— at least, in conformity with the covenant in that behalf contained in the said indenture of lease, and will on demand produce to the said C. D., his executors, administrators, or assigns, the policy of such insurance and the receipt for every premium payable in respect thereof: AND IT IS HEREBY DECLARED, that after any sale of the said premises or any part thereof, under the statutory power of sale, the said A. B., or other the person in whom the premises shall for the time being be vested for the last day of the term granted by the said indenture of lease, shall stand possessed thereof, In trust for the purchaser, and to be assigned and disposed of as he may direct: AND IT IS HEREBY DECLARED (*o*), that no lease by the said A. B., his executors, administrators, or assigns of the said premises, or any part thereof, during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, shall consent thereto in writing.

IN WITNESS, &c.

Covenant to pay principal and interest.

Demise of parcels to mortgagee.

Proviso for redemption.

Covenant by mortgagor to keep premises insured according to covenant in lease.

After a sale last day of the term to be held in trust for purchaser.

Power of leasing conferred by Act on mortgagor not to be exercised without consent.

(*o*) In a mortgage of a leasehold house this clause will be generally proper. If it is desired to negative the power to grant building leases only, insert "building" before "lease."

No. X.

MORTGAGE *of* LEASEHOLDS *by* ASSIGNMENT.

LEASEHOLDS BY ASSIGNMENT.

THIS INDENTURE, &c. (*same as last Precedent to the end of first testatum*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the messuage and premises comprised in the hereinbefore recited indenture of lease: TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of —— years granted therein by the said indenture of lease: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the said —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned to him or them (*Covenant for insurance and declaration as to leasing power if desired, supra*, p. 518).

Mortgagor assigns leaseholds to mortgagee.

Proviso for redemption.

IN WITNESS, &c.

No. XI.

MORTGAGE *of a* LEASEHOLD MESSUAGE *by* DEMISE, *with express* POWER *of* SALE (*p*).

LEASEHOLDS WITH POWER OF SALE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: (*Recite lease and agreement for loan as in Precedent No. IX.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby

Parties.

Witnessing part.

(*p*) See note at p. 513, *supra*.

LEASEHOLDS WITH POWER OF SALE.

acknowledges), the said A. B. hereby covenants, &c. (*same as in Precedent No. IX., down to end of covenant for insurance against fire*): AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his executors, administrators, or assigns, to sell the messuage and premises hereby demised, or expressed so to be, or any part thereof, either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power to buy in at sales by auction, to rescind contracts for sale, and to resell without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale which the said C. D., his executors, administrators, or assigns shall think proper: AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay and retain the costs and expenses attending such sale or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon this security, and shall pay the surplus (if any) to the said A. B., his executors, administrators, or assigns: PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of sale hereinbefore contained shall not be exercised unless default shall be made in payment of the said principal sum of £—— and interest, or some part thereof respectively, on the said —— day of —— next, and also for the space of three calendar months next after a notice in writing requiring payment thereof shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to or left at the usual or last known place of abode in England or Wales of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the premises hereby demised, or unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment: PROVIDED ALWAYS, and it is hereby declared, that no purchaser at any sale made under the power hereinbefore contained shall be bound or concerned to see or inquire whether

Power of sale.

Trusts of purchase-money.

Power only to be exercised in case of default, &c.

Purchaser not bound to inquire as to default, &c.

any such default has been made, or whether any such notice has been given or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, or be affected by notice that no such default has been made, or notice given or left or affixed as aforesaid, or that the sale is otherwise unnecessary or improper: AND IT IS HEREBY DECLARED, that the said power of sale may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys for the time being owing on the security of these presents: AND IT IS HEREBY ALSO DECLARED, that after any sale made under the aforesaid power, the said A. B., his executors, administrators, and assigns, shall stand possessed of the premises sold for the last day of the term granted by the hereinbefore recited indenture of lease, In trust for the purchaser, his executors, administrators, and assigns, and to be assigned and disposed of as he or they may direct. (*Declaration as to leasing power, supra*, p. 518.)

LEASEHOLDS WITH POWER OF SALE.

Power may be exercised by any person entitled to give a discharge for mortgage money.

After a sale last day of the term to be held in trust by purchaser.

IN WITNESS, &c.

No. XII.

MORTGAGE *of* PROPERTY *comprised in several* LEASES *by* ASSIGNMENT. POWER *to mortgagee to* GRANT UNDER-LEASES.

OF PROPERTY COMPRISED IN SEVERAL LEASES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: (*Recite several leases to A. B.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the lands,

Parties.

Mortgagor assigns parcels

OF PROPERTY COMPRISED IN SEVERAL LEASES.

hereditaments, and premises comprised in and demised by the several hereinbefore recited indentures of lease: To HOLD the same unto the said C. D. for all the residue now to come of the said several terms of years granted by the said indentures respectively: PROVIDED ALWAYS that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned to him or them; AND THE SAID A. B. hereby covenants with the said C. D. as follows (namely), that he, the said A. B., his executors, administrators, or assigns, will at all times during the continuance of this security keep the messuages and buildings comprised in this security insured against loss or damage by fire, in conformity with the covenants for insurance contained in the said indentures of lease respectively, and so that the total amount of such insurance shall not be less than £——, and will duly pay the premiums and other sums of money payable for that purpose, and immediately after every such payment will deliver to the said C. D., his executors, administrators, or assigns the receipt for the same: AND IT IS HEREBY AGREED AND DECLARED that section 18 of the Conveyancing and Law of Property Act, 1881, shall not apply to these presents, but it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times after he or they shall have entered into possession or receipt of the rents and profits of the said premises by virtue of these presents, to grant any underlease or underleases thereof, or of any part thereof, for any derivative term or terms of years, and either in possession or reversion, and either with or without taking a premium for the making thereof, and at such yearly or other rents, and subject to such covenants and conditions, and generally upon such terms as he or they shall think proper.

to mortgagee for residue of terms.

Proviso for redemption.

Covenant by mortgagor to keep buildings insured.

Power to mortgagee to grant underleases.

IN WITNESS, &c.

No. XIII.

MORTGAGE *of a* LEASEHOLD ESTATE *for* LIVES *to* TWO MORTGAGEES, *who make the advance on a* JOINT ACCOUNT, *with provisions for renewal* (*a*). LEASEHOLDS FOR LIVES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. and E. F. of, &c. (*mortgagees*), of the other part: WHEREAS, &c. (*Recite lease by X. Y. to A. B. for lives of L., M., and N.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D. and E. F. on or before the execution of these presents, out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B. hereby covenants, &c. (*Covenants to pay principal and interest, supra*, p. 511): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. (hereinafter called "the mortgagor"), as beneficial owner, hereby conveys unto the said C. D. and E. F. (hereinafter called "the mortgagees"), ALL THOSE the said several pieces or parcels of ground, messuages, or tenements, buildings, hereditaments, and premises comprised in the hereinbefore recited indenture of lease, which premises are underlet as in the schedule hereto is mentioned, TOGETHER with the rents reserved by the several indentures of underlease mentioned in the said schedule, and the benefit of the covenants therein contained, and on the part of the several under-lessees to be respectively observed and performed: TO HOLD the same, subject to the underleases, unto the mortgagees, for the lives of the said L., M., and N., and the lives and life of the survivors and survivor of them, and for all other (if any) the estate and interest of the mortgagor therein (*Proviso for redemption and covenant by mortgagor to keep premises*

Parties.

Witnessing part.

Consideration.

Mortgagor conveys parcels.

To mortgagees for lives of *cestuis que vie*.

(*a*) When renewable leaseholds are made the subject of mortgage, the mortgage should contain a covenant by the mortgagor to renew, as he could not otherwise be compelled to do so. But the mortgagee may renew even in the absence of an express power to do so, and may hold the renewed lease as a security for the moneys he has expended in effecting the renewal, together with interest on such moneys. (Lacon and Mertins, 3 Atk. 4.)

When renewable leaseholds are mortgaged, mortgagor should covenant to renew.

LEASEHOLDS FOR LIVES.

insured against fire, supra, p. 511) : And the mortgagor hereby covenants with the mortgagees that he the mortgagor will from time to time, during the continuance of this security, on the death of any person or persons for whose life or lives the said premises shall for the time being be held, join and concur with the mortgagees in obtaining a renewal of the subsisting lease for the time being of the said premises for a new life or new lives, as the case may be, to be added to the lives or life which shall be then in being, and so that the said renewed lease shall be vested in the mortgagees, subject to such right or equity of redemption as shall then be subsisting under these presents : And also will pay the fines, fees, and other expenses of procuring or otherwise attending every such renewal of the said lease : and that if for the space of three calendar months next after the dropping of any life upon which the now subsisting lease or any renewed lease of the said premises is or shall be held, the mortgagor shall not make or concur in such renewal as aforesaid, it shall be lawful for the mortgagees, if they shall think proper, by surrender of the then subsisting lease of the said premises or otherwise, to obtain such renewal of such lease for the time being as aforesaid, subject to such right or equity of redemption as aforesaid, and in such case the mortgagor will immediately thereupon pay and reimburse unto the mortgagees such sum or sums of money as they shall have paid for the fines, fees, or other expenses in or about the procuring or otherwise attending every such renewal, together with interest for the same, at the rate of £5 per cent. per annum, to be computed from the time or respective times of the payment thereof : And such sum or sums of money shall in the meantime be charged on the said hereditaments and premises in addition to the said principal sum of £—— and the interest thereof. (*Declaration as to leasing power, supra*, p. 512). And it is declared that the expressions "the mortgagor" and "the mortgagees" include all persons deriving title under them respectively wherever the context admits.

Covenant by mortgagor to concur in all acts for renewal.

That if mortgagor make default mortgagee may renew.

Expenses of renewal to be borne by mortgagor, and to be charged on the premises.

In witness, &c.

The Schedule above referred to.

No. XIV.

MORTGAGE *of* FREEHOLDS *and* COPYHOLDS *to persons* LENDING *on a* JOINT ACCOUNT.

FREEHOLDS AND COPYHOLDS TO SEVERAL.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D., E. F., and G. H., on or before the execution of these presents, out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, supra*, p. 511): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys (*Conveyance of freeholds to C. D., E. F., and G. H., in fee; proviso for redemption, supra*, p. 511): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby covenants with the said C. D., E. F., and G. H., THAT he the said A. B. will forthwith, at his own cost, surrender or cause to be surrendered into the hands of the lord of the manor of ——, according to the custom thereof, ALL, &c. (*parcels*): TO THE USE of the said C. D., E. F., and G. H., in customary fee simple, according to the custom of the said manor, by and under the rents, heriots, suits, and services therefor due and of right accustomed: SUBJECT NEVERTHELESS TO A CONDITION for making void the same corresponding to the proviso for redemption hereinbefore contained as to the freehold hereditaments hereinbefore conveyed. (*Declaration as to leasing power, if desired, supra*, p. 512.)

Conveyance of freeholds subject to redemption.

Covenant to surrender copyholds,

subject to a condition corresponding to proviso for redemption as to freeholds.

IN WITNESS, &c.

No. XV.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS.

FREEHOLDS AND LEASEHOLDS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite lease to A. B., supra*, p. 517), WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant by mortgagor to pay principal and interest, supra*, p. 506): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, &c. (*Conveyance of freeholds to mortgagee, supra*, p. 506), subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. as beneficial owner, hereby demises (*Demise of leaseholds to C. D. for residue of term, wanting the last day, supra*, p. 518): Subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the freehold premises hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them, and the demise hereby made of the said leasehold premises shall be void (*After a sale, purchaser to be entitled to last day of term, supra*, p. 518): [AND IT IS HEREBY DECLARED that no lease made by the said A. B., his heirs, executors, administrators, or assigns, of the said premises or any part thereof during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns shall consent thereto in writing.]

Conveyance of freeholds.

Demise of leaseholds.

Proviso for redemption.

Declaration as to leasing powers.

IN WITNESS, &c.

No. XVI.

MORTGAGE *of* FREEHOLDS *and* COPYHOLDS, *and of* LEASEHOLDS *for a long* TERM.

FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant by mortgagor to pay principal and interest, supra*, p. 506): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, &c., the said A. B., as beneficial owner, &c. (*Conveyance of freeholds to C. D., in fee, supra*, p. 506), subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner (*Covenant to surrender copyholds to the use of C. D., in fee, supra*, p. 515), subject to a condition for making void the same, corresponding to the proviso for redemption hereinafter contained as to the freehold and leasehold hereditaments hereby conveyed and assigned respectively: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL, &c. (*parcels*), (which hereditaments and premises lastly hereinbefore described were, by an indenture dated, &c., and made, &c., demised unto X. Y., his executors, administrators, and assigns, for the term of 1,000 years, and have by virtue of divers assignments and acts in the law become vested in the said A. B. for the residue of the said term): TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 1,000 years, subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said freehold and leasehold premises shall, at the request and cost of the said A. B., his heirs, executors, administrators, or assigns, be reconveyed and reassigned to him or them. (*Declaration as to leasing power, if desired, supra*, p. 526.)

Parties.

Mortgagor covenants to pay principal and interest.

Conveyance of freeholds.

Covenant to surrender copyholds.

Assignment of leaseholds

to mortgagee.

Proviso for redemption.

IN WITNESS, &c.

No. XVII.

TO SECURE A SUM PAYABLE BY INSTALMENTS.

MORTGAGE *of* FREEHOLDS *by* APPOINTMENT *and* CONVEYANCE *in fee, and* PROVISION *for* PAYMENT *of* MORTGAGE-MONEY *by* INSTALMENTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite conveyance to uses to bar dower in favour of A. B.*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby appoints and conveys unto the said C. D., ALL, &c. (*parcels—Habendum to mortgagee in fee, proviso for redemption, supra*, p. 506): PROVIDED ALWAYS, and it is hereby agreed and declared that if the said principal sum of £—— hereby secured shall be paid by the instalments following (that is to say), the sum of £—— on the 31st day of December next, or within thirty days thereafter, and the sum of £—— on the 31st day of December in every succeeding year, or within thirty days thereafter, until the whole of the said principal sum shall be paid, and if every half-yearly payment of interest due under these presents shall be paid upon the day hereinbefore appointed for the payment thereof, or within thirty days thereafter [and if the covenant hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed], then and in such case the said C. D., his executors, administrators, or assigns, shall not nor will require payment of the said principal sum, or any part thereof, otherwise than by such instalments as aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that upon any sale under the statutory power in that behalf, the purchaser shall not be bound or concerned to see or inquire whether any default has been made in payment of the said principal sum or any instalment thereof, or any interest thereon, contrary to the proviso last hereinbefore contained, or otherwise as to the necessity or propriety of the

Mortgagor covenants to pay principal and interest.

Mortgagor appoints and conveys to mortgagee.

Proviso for payment of mortgage money by instalments.

Purchaser not bound to inquire whether default has been made, &c.

sale, or be affected by notice that no such default has been made as aforesaid, or that the sale is otherwise unnecessary or improper. (*Declaration as to leasing power, if desired, supra*, p. 507.) TO SECURE A SUM PAYABLE BY INSTALMENTS.

IN WITNESS, &c.

No. XVIII.

MORTGAGE *of* LAND *in* EXERCISE *of a general* POWER *of* APPOINTMENT.

MORTGAGE IN EXERCISE OF POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite conveyance to mortgagor to such uses as he might by deed appoint, and subject thereto to uses in strict settlement*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., &c., (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints that ALL, &c. (*parcels*), shall go, remain, and be to the use of the said C. D. in fee simple: PROVIDED ALWAYS, that if the said sum of £ ——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the appointment hereby made shall be void: PROVIDED ALWAYS, and it is hereby declared that as between the said A. B. and the hereditaments and premises hereby appointed, the said hereditaments and premises shall be the primary security for the principal sum hereby secured, and the interest thereof, But this proviso shall not affect the said C. D., or his right to resort to his several securities in such order and manner as he may think fit.

Parties.

Recite mortgage to such uses as mortgagor should appoint.

Appointment of parcels to mortgagee.

Proviso for redemption.

Declaration as to order of liability of mortgagor and mortgaged property.

IN WITNESS, &c.

No. XIX.

BY A MARRIED WOMAN.

MORTGAGE *in* FEE *by* HUSBAND *and* WIFE *married before the 1st of January*, 1883, *of* FREEHOLDS *belonging to* WIFE, *and not being her* SEPARATE PROPERTY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. his wife (*mortgagor*), of the one part, and

Recite title of female mortgagor.

E. F. of, &c. (*mortgagee*), of the other part (*Recite death of X. Y. father of C. B.*, in 1880, *intestate, leaving C. B. his heiress-at-law, and that X. Y. was at his death seised in fee simple of the hereditaments hereinafter described and intended to be hereby conveyed*):

Agreement for loan.

AND WHEREAS the said E. F. has agreed to lend to the said A. B. and C., his wife, the sum of £——, upon having the repayment thereof, with interest, secured to him in the manner hereinafter expressed:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C., his wife, paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*),

Consideration.

Husband and wife

THE said A. B. and C., his wife, as beneficial owners, do by this deed, which is intended to be acknowledged by the said C. B. pursuant to the statute in that behalf,

convey parcels to mortgagee in fee.

convey unto the said E. F.: ALL, &c. (*parcels—Habendum to E. F. in fee*):

Proviso for redemption.

PROVIDED ALWAYS, that if the said A. B. and C., his wife, or either of them, or any person claiming under them or either of them, shall on the —— day of —— next pay to the said E. F. the sum of £——, with interest for the same, after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the said hereditaments and premises shall, at the request and cost of the person or persons making such payment, be re-conveyed unto and to the use of the said C. B., in fee simple:

Covenant by husband for payment of principal and interest.

AND by way of further security the said A. B. hereby covenants with the said E. F. to pay to him the said sum of £——, with interest thereon, as aforesaid, on the said —— day of —— next, and also so long after that day as any principal money remains due under these presents, to pay to him interest thereon after the same rate by equal half-yearly payments on

the —— day of ——, and the —— day of ——: PROVIDED ALWAYS, and it is hereby declared by the said A. B. and C., his wife, that as between the said A. B. and the hereditaments and premises hereby conveyed, the said hereditaments and premises shall be the primary security for the principal sum and interest hereby secured: But this proviso shall not affect the said E. F., or his right to resort to his several securities in such order and manner as he may think fit (*a*). (*Declaration as to leasing power, if desired, supra*, p. 507.)

BY A MARRIED WOMAN.

Proviso that the mortgaged property shall be the primary security.

IN WITNESS, &c.

No. XX.

MORTGAGE *by* HUSBAND *of his* WIFE'S LEASEHOLDS, *the same having been* ACQUIRED *by her, and her* MARRIAGE *having taken place,* BEFORE *the 1st of* JANUARY, 1883.

MORTGAGE BY HUSBAND OF WIFE'S LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated the —— day of ——, 1880, and made between G. H., Esq., of the one part, and E. F., spinster, of the other part, ALL that piece of land (*here describe the property*), and a messuage or dwelling-house and other buildings which have been erected thereon, were demised by the said G. H., unto the said E. F. for the term of —— years thenceforth next ensuing at a peppercorn rent, and subject to certain lessees' covenants as to user: AND WHEREAS the said A. B. intermarried with the said E. F. on the —— day of ——, 1882: AND WHEREAS the said C. D. has agreed, at the request of the said A. B., to

Parties.

Recite lease at nominal rent.

Marriage of lessee with mortgagor before 1883.

(*a*) If, however, the intention is that the husband shall be primarily liable, the proviso will be as follows:—"Provided always, and it is hereby declared by the said A. B., and C., his wife, that as between, &c., the said A. B. shall be primarily liable to the payment of the said principal sum and interest hereby secured: but this proviso, &c."

MORTGAGE BY HUSBAND OF WIFE'S LEASEHOLDS.

lend to him the sum of £—— upon having the repayment thereof, with interest, secured to him in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH,

Agreement for loan.

Consideration.

that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the

Mortgagor covenants to pay principal and interest.

said A. B. hereby covenants (*Corenant by A. B. to pay principal money and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D.

Mortgagor assigns leaseholds of his wife.

THE PIECE of ground, messuage, or dwelling-house, buildings and premises comprised in and demised by the said recited indenture, TO HOLD the same unto the said E. F., for all the residue

Proviso for redemption.

now unexpired of the said term of —— years: PROVIDED ALWAYS that if the said sum of £—— with interest thereon shall be paid on the said —— day of —— next according to the foregoing covenant in that behalf, the aforesaid assignment shall be void. (*Covenant by the said A. B. for insurance against fire, supra*, p. 506.)

Declaration that leaseholds shall be primary fund.

PROVIDED ALWAYS, that as between the general estate of the said A. B. and the leasehold premises hereby assigned, the said leasehold premises shall be the primary fund for the payment of the said principal money and interest (*Declaration as to leasing power, supra*, p. 518).

IN WITNESS, &c.

No. XXI.

MORTGAGE BY WIFE OF SEPARATE PROPERTY UNDER MARRIED WOMEN'S PROPERTY ACT, 1882.

MORTGAGE *by* MARRIED WOMAN *of* FREEHOLDS *or* COPYHOLDS *or* LEASEHOLDS, *being her* SEPARATE PROPERTY *under the* MARRIED WOMEN'S PROPERTY ACT, 1882 (*b*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., the wife of E. B. of, &c. to whom she was married

(*b*) See Dissertation on Husband and Wife in Vol. II.

since the 31st day of December, 1882, (*c*) (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*) of the other part (*d*): WITNESSETH, &c. (*The rest of the deed will be in the same form as Precedent No. I., supra*, p. 506, *as to freeholds; or No. VII., supra*, p. 515, *as to copyholds; or No. IX., supra*, p. 517, *as to leaseholds, making the necessary change of gender.*)

MORTGAGE BY WIFE OF SEPARATE PROPERTY UNDER MARRIED WOMEN'S PROPERTY ACT, 1882.

IN WITNESS, &c.

No. XXII.

MORTGAGE *of an* EQUITY *of* REDEMPTION.

OF EQUITY OF REDEMPTION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and G. H. of, &c. of the other part, the hereditaments hereinafter described were conveyed by the said A. B. unto and to the use of the said G. H. in fee simple, subject to a proviso for the redemption of the said hereditaments on payment by the said A. B. to the said G. H. of the sum of £500 with interest thereon: AND WHEREAS the said principal sum of £500 still remains owing to the said G. H. upon the security of the said indenture, with interest thereon from the —— day of —— last: AND WHEREAS the said C. D. hath agreed to lend to the said A. B. the sum of £—— upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. (*Covenant to pay*

Parties.

Recite first mortgage.

That principal sum remains due on first mortgage.

Agreement for loan.

Witnessing part.

(*c*) If the marriage was before the 1st of January, 1883, and the property was acquired after that date, so as to come within the Married Women's Property Act, 1882, the date of the marriage will be omitted in the description of the mortgagor, and recitals will be introduced showing the acquisition of the property since the 31st of December, 1882.

Mortgage by married woman married before 1883, the property acquired after that date.

(*d*) If the property is leasehold, the lease and agreement for loan since the 31st of December, 1882, will be recited as in Precedent No. IX., *supra*, p. 517.

OF EQUITY OF REDEMPTION.

principal money and interest, supra, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*Parcels—Habendum to C. D. in fee*), subject to the said indenture of the —— day of —— 18—, and the principal sum and interest thereby secured, and subject also to the following proviso, namely (*Proviso for redemption and declaration as to leasing power, if desired, supra*, pp. 506, 507).

Mortgagor conveys parcels to mortgagee subject to first mortgage.

IN WITNESS, &c.

No. XXIII.

OF EQUITY OF REDEMPTION WHERE THERE ARE PRIOR MORTGAGES.

MORTGAGE *of an* EQUITY *of* REDEMPTION, *where there have been several* PRIOR MORTGAGES.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple, SUBJECT to the prior mortgages mentioned in the schedule hereto, and subject also to the following proviso, namely: (*Proviso for redemption and other clauses as in No. I., supra*, pp. 506, 507.)

Parties.

Conveyance of parcels to mortgagee subject to prior mortgages.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

An indenture dated, &c., and made, &c. (*date and parties*), being a mortgage for the sum of £—— and interest.

An indenture, &c.

(*Dates, parties, and short particulars of other mortgages.*)

No. XXIV.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *by* TENANTS *in* COMMON.

OF FREEHOLDS AND LEASEHOLDS BY TENANTS IN COMMON.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*mortgagors*), of the one part, and E. F. of, &c. (*mortgagee*), of the other part: WHEREAS G. H., late of, &c., made his will dated the —— day of ——, and thereby he devised and bequeathed the freehold and leasehold hereditaments hereinafter described, and all his interest therein respectively, unto and to the use of the said A. B. and C. D., their heirs, executors, administrators, and assigns, in equal shares, as tenants in common, and not as joint tenants (*Death of testator and probate of his will*): AND WHEREAS the said leasehold hereditaments and premises were at the decease of the said testator held by him for the then unexpired residue of a term of 1,000 years, created by an indenture dated, &c., and made, &c., at a peppercorn rent, and subject to certain covenants on the part of the lessee as to user, as in the said indenture is mentioned: AND WHEREAS the said E. F. has agreed, upon the request of the said A. B. and C. D., to lend to them the sum of £400 upon having the repayment thereof with interest secured to him in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £400 to the said A. B. and C. D. paid by the said E. F., on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D. hereby jointly and severally covenant with the said E. F. (*covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. and C. D., as beneficial owners, hereby respectively convey and assign unto the said E. F., First, ALL, &c. (*freehold parcels*), Secondly, ALL, &c. (*leasehold premises*), TO HOLD the said freehold hereditaments unto and to the use of the said E. F. in fee simple, and to hold the said leasehold hereditaments unto the said E. F. for all the residue now unexpired of the said term of 1,000 years created therein as aforesaid:

Parties.

Recite will of G. H., whereby freeholds and leaseholds are devised and bequeathed to mortgagors in equal shares.

That leaseholds are held for residue of long term.

Agreement for mortgage.

Covenant by mortgagors to pay principal and interest.

Mortgagors convey freeholds to mortgagee in fee, and leaseholds to mortgagee for residue of term.

OF FREEHOLDS AND LEASEHOLDS BY TENANTS IN COMMON.

Proviso for redemption.

Covenant by mortgagors to insure against fire.

Declaration that no lease shall have effect under Conveyancing Act, 1881, without consent of mortgagee.

PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said freehold and leasehold hereditaments shall, at the request and cost of the said A. B. and C. D., their heirs, executors, administrators, or assigns, be re-conveyed and re-assigned to them as tenants in common, or as they shall direct: AND the said A. B. and C. D. hereby jointly and severally covenant with the said E. F., that they the said A. B. and C. D., their heirs, executors, administrators, or assigns, will (*covenant for insurance against fire, supra*, p. 507): AND IT IS HEREBY DECLARED that no lease made by the said A. B. and C. D., their heirs, executors, administrators, or assigns, or any of them, during the continuance of this security, shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said E. F., his executors, administrators, or assigns, shall consent thereto in writing.

IN WITNESS, &c.

No. XXV.

MORTGAGE WITH CONCURRENCE OF PRIOR MORTGAGEE.

MORTGAGE *with the* CONCURRENCE *of a* PRIOR MORTGAGEE, *who* POSTPONES *his* MORTGAGE.

Parties.

Recite prior mortgage.

Agreement for mortgage.

Agreement by prior mortgagee to postpone his security.

Witnessing part.

THIS INDENTURE, made the —— day of ——, BETWEEN E. F. of, &c. (*prior mortgagee*), of the one part, A. B. of, &c. (*mortgagor*), of the second part, and C. D. of, &c. (*mortgagee*), of the third part (*recite mortgage in fee from A. B. to E. F. to secure £1,000,—that principal sum still remains due*): AND WHEREAS the said A. B. hath applied to and requested the said C. D. to lend to him the sum of £2,000, which the said C. D. hath agreed to do, upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS the said E. F. hath agreed to postpone his aforesaid security to the security intended to be hereby made in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2,000 paid to the said A. B.

MORTGAGE WITH CONCURRENCE OF PRIOR MORTGAGEE.

by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., &c. (*covenant to pay principal money and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said E. F., as mortgagee, at the request of the said A. B., hereby conveys, and the said A. B., as beneficial owner, hereby conveys and confirms unto the said C. D., ALL, &c. (*parcels, &c.*): TO HOLD the same unto and to the use of the said C. D. in fee simple: PROVIDED ALWAYS, that if the said sum of £2,000, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said hereditaments shall, at the cost of the said A. B., his heirs or assigns, be reconveyed to the use of the said E. F. in fee simple, subject to such right or equity of redemption as shall be subsisting therein under or by virtue of the said indenture of mortgage of the —— day of ——: AND IT IS HEREBY AGREED AND DECLARED between and by the said A. B. and E. F. that, subject to the security hereby made, the said indenture of mortgage, and all powers and provisions therein contained, shall remain in full force (*declaration as to leasing power, if desired, supra*, p. 507, *adding after the words*, "C. D., his executors, administrators, or assigns," *the words*, "or the said E. F., his executors, administrators, or assigns"): AND the said E. F. hereby acknowledges the right of the said C. D. to production and delivery of copies of the said indenture of mortgage (*e*).

IN WITNESS, &c.

Prior mortgagee and mortgagor convey to mortgagee.

Proviso for redemption.

Declaration that, subject to this security, former mortgage shall remain in full force.

Acknowledgment by postponed mortgagee as to production of mortgage deed.

(*e*) It is supposed in this case that E. F. retains his mortgage deed, but that all the other title deeds are handed over to C. D. C. D. should at the same time give to E. F. a separate acknowledgment as to these deeds, which might be as follows:—

"To C. D. of, &c.: I, E. F. of, &c., hereby acknowledge your right to production and delivery of copies of the documents mentioned in the schedule hereto, which documents relate to certain lands and hereditaments situate at —— mortgaged to you by an indenture dated, &c., and made, &c."

Acknowledgment by mortgagee to postponed mortgagee as to production of deeds.

No. XXVI.

MORTGAGE OF LEASEHOLDS BY EXECUTORS.

MORTGAGE *of* LEASEHOLDS *by* EXECUTORS (*e*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*mortgagors*), of the one part, and E. F. of, &c. (*mortgagee*), of the other part (*recite lease from G. H. to X. Y.;—will of X. Y. appointing A. B. and C. D. executors;—death of X. Y. and probate of his will*): AND WHEREAS the said A. B. and C. D., as such executors as aforesaid, having occasion for the sum of £200, have requested the said E. F. to lend to them that sum, which he the said E. F. has agreed to do, on having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 paid to the said A. B. and C. D. by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), they the said A. B. and C. D., as the personal representatives of the said X. Y. deceased, hereby demise unto the said E. F., ALL the hereditaments and premises comprised in and demised by the said indenture of lease: To HOLD the same unto the said E. F., for all the residue now unexpired of the said term of —— years granted therein by the said indenture (except the last day of the said term): PROVIDED ALWAYS, that if any person or persons interested in the said premises under the said will of the said X. Y. shall, on the —— day of —— next, pay to the said E. F. the sum of £200, with interest thereon at the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the demise hereby made shall be void: AND IT IS HEREBY DECLARED (but not so as to create any personal liability on the part of the said A. B. and C. D., or either of them), that if the said sum of £—— shall not be paid on the said —— day of —— next, interest thereon after the rate aforesaid shall continue to be paid to the said E. F., by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, until the said sum of £——

Parties.

Agreement for loan.

Witnessing part.

Consideration.

Executors demise leaseholds

to mortgagee for residue of term, except last day.

Proviso for redemption.

Declaration that interest shall be paid half-yearly.

(*e*) An executor or administrator has an absolute power of disposal over the personal property of the testator or intestate, and may therefore sell or mortgage his chattels real, and the mortgagee need not inquire whether the debts or legacies are paid.

shall be fully paid: AND FURTHER, that the buildings on the said premises hereby demised shall, at all times during the continuance of this security, be kept insured against loss or damage by fire in the sum of £—— at least: AND IT IS HEREBY ALSO DECLARED that after any sale made under the statutory power in that behalf, the said A. B. and C. D., or other the person or persons in whom the said term of —— years granted by the said indenture of lease shall for the time being be vested, shall stand possessed of the premises sold for the last day of the said term, In trust for the purchaser, and to be assigned and disposed of as he may direct. (*Declaration as to leasing power, if desired, supra*, p. 518.)

MORTGAGE OF LEASEHOLDS BY EXECUTORS.

And that buildings shall be insured.

After sale, last day of term to be held in trust for purchaser.

IN WITNESS, &c.

No. XXVII.

MORTGAGE *of a* POLICY *of* ASSURANCE *effected in the* NAME *of the* MORTGAGOR (*f*).

POLICY OF ASSURANCE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. ALL THAT policy of assurance, under the hands of three of the directors of the —— Assurance Society, dated the —— day of ——, and numbered ——, whereby the sum of £—— is assured to be paid to the executors, administrators, or assigns of the said A. B. within three calendar months after proof of his death, subject to the annual premium of £——, and the moneys assured by and to become payable thereunder: TO HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said

Parties.

Mortgagor assigns policy

to mortgagee.

Proviso for redemption.

(*f*) Notice of this mortgage should be given to the assurance office as soon as the deed is executed.

POLICY OF ASSURANCE.

sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said policy shall be reassigned unto the said A. B. at his cost (*g*): And the said A. B. hereby covenants with the said C. D. that he the said A. B. will not do any act or commit any default whereby the said policy of assurance may be rendered void or voidable, and if the said policy, or any new policy to be effected as hereinafter mentioned, shall by any means become void, will forthwith at his own cost effect a new policy on his life in lieu of such void policy, in the name or names of the said C. D., his executors, administrators, or assigns, in some office to be approved of by him or them, in the sum of £—— at least, such new policy to be subject to the like right of redemption as the policy hereby assigned, and will duly and regularly pay all premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policy hereby assigned, and every or any such new policy as aforesaid, and will deliver to the said C. D., his executors, administrators, or assigns, the receipt for every such premium within seven days after the same shall become due: And that the said C. D. his executors, administrators, or assigns, may keep on foot the said policy hereby assigned, or effect or keep on foot any such new policy as aforesaid (as the case may require) in the event of the said A. B. omitting to do so, and that all moneys paid by him or them for that purpose, with interest for the same after the rate of £5 per cent. per annum, computed from the time or respective times of paying or advancing the same, shall be repaid by the said A. B. on demand, and shall in the meantime be charged on the policy of assurance and premises for the time being subject to this security, in addition to the said principal sum of £—— hereby originally secured, and the interest thereof (*h*).

Covenant by mortgagor not to vitiate policy,

to effect new policy if this one becomes void,

and to pay premiums,

and to deliver receipts.

If mortgagor makes default mortgagee may keep up policy.

Security to include moneys advanced by mortgagee for insurance.

In witness, &c.

(*g*) See sect. 22 of the Conveyancing Act, 1881.

(*h*) In the absence of any express provision a mortgagee is entitled to charge the property with any sums he may advance for keeping up the policy, and with interest thereon at four per cent. (Bellamy *v.* Brickenden, 2 J. & H. 137; Gill *v.* Downing, 17 L. R. Eq. 316; Leslie *v.* French, 23 Ch. D. 352.)

Mortgagee should be authorized to keep up policy.

No. XXVIII.

MORTGAGE *of a* POLICY *of* ASSURANCE *effected in the* NAME *of the* MORTGAGEE. TWO SURETIES *join in the* SECURITY (*i*).

POLICY OF ASSURANCE WHERE SURETIES JOIN.

THIS INDENTURE, made the —— day of ——-, BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c., and

Parties.

(*i*) Where a person joins as surety it is necessary that he should be made acquainted with all the circumstances and facts which bear upon or can affect his position, for if he is kept in ignorance of anything which might have influenced him in undertaking the obligation, the creditor will have no remedy against him; and in order to preserve his obligation, care must be taken in all subsequent transactions between the principal debtor and the creditor that no arrangement is made between them either as to the payment of the debt or the securities which can prejudicially affect the surety's position. Thus, if further time is given by the creditor to the principal debtor for the payment of the debt without the surety's consent, and without reserving a right to proceed against the surety (Samuell *v.* Howarth, 3 Mer. 272; Oriental Financial Corporation *v.* Overend & Co., L. R. 7 Ch. 142), or if the creditor without the consent of the surety compounds with the principal debtor or releases him from payment of the debt (Webb *v.* Hewitt, 3 K. & J. 438; Nicholson *v.* Revill, 4 Ad. & El. 675; Taylor *v.* Manners, L. R. 1 C. A. 48), the surety will be discharged (see Tudor's L. C. in Equity, p. 980, 4th ed.); but it seems that a covenant not to sue the principal debtor, subject to a proviso that the creditor should not be prevented from suing any other person than the principal debtor who might be liable to pay the money, does not discharge the surety. (Price *v.* Barker, 24 L. J. N. S. Q. B. p. 130; Green *v.* Winn, L. R. 4 C. A. 204.) The surety will not, however, be released from his obligations if his remedies are not affected by the arrangement between the creditor and the principal debtor (Hulme *v.* Coles, 2 Sim. 12), or if further time is given with the consent of the surety, or if the right of the principal debtor to proceed against the surety is clearly reserved (Boultbee *v.* Stubbs, 18 Ves. 32; Webb *v.* Hewitt, *ubi supra*), or by the creditor not taking proceedings against the principal debtor for the payment of the debt, or by his taking an additional security or afterwards releasing such further security (Newton *v.* Chorlton, 10 Hare, 646); but the surety would be released if the creditor were to take from the debtor a security in substitution for all or any of the original securities. (Tud. L. C. in Equity, 1091, 4th ed.) It is also to be observed, that if there are two sureties and the creditor releases one, such release operates as a release of the other. (Nicholson *v.* Revill, 4 A. & E. 675; Evans *v.* Brembridge, 2 K. & J. 183.) So, if the mortgage deed is drawn in such a manner that several sureties shall enter into joint and several covenants, the signature of all is necessary in order to affect all or any of them. (Evans *v.* Brembridge, 2 K. & J. 174.) If a surety pays the debt of the principal debtor he is entitled to stand in the place of the creditor as to all his remedies and the benefit of all his securities (whether they be land, specialty, or otherwise) for the payment of his debt. (Newton *v.* Chorlton, *ubi supra*; Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97, s. 5).) Under

Surety discharged from liability by new arrangement with debtor, *e. g.*, by giving him further time,

unless all surety's remedies against debtor are unaffected.

Release of one surety is a release of others.

Surety paying debt entitled to stand in place of creditor.

POLICY OF ASSURANCE WHERE SURETIES JOIN.

E. F. of, &c. (*sureties*), of the second part, and G. H. of, &c. (*mortgagee*) of the third part: WHEREAS the said A. B., and also the said C. D. and E. F., have requested the said G. H. to lend to the said A. B. the sum of £——, which the said G. H. has agreed to do upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS it was part of the security agreed upon as aforesaid, that the said A. B. should effect an assurance on his life in the name of the said G. H. in the sum of £——, and accordingly by a policy of assurance under the hands of three of the directors of the —— Assurance Company, dated ——, and numbered ——, the sum of £—— is assured to be paid to the said G. H., his executors, administrators, or assigns, within three calendar months after proof of the decease of the said A. B., subject to the payment of an annual premium of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE SAID A. B., C. D., and E. F. hereby jointly and severally (*k*) covenant with the said G. H. to pay to him, on the —— day of —— next, the sum of £——, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO so long after that day as any principal money remains due on this mortgage, to pay to him interest thereon after the rate aforesaid, by equal half-yearly payments on the —— day of ——, and the day of ——: AND ALSO to pay all premiums and other sums of money which shall from time to time become payable for keeping on foot the hereinbefore recited policy of assurance, and if the said policy shall become void forthwith

Recite agreement for loan.

Policy of assurance on life of mortgagor effected in the name of the mortgagee.

Witnessing part.

Joint and several covenants by mortgagor and his sureties to pay principal sum and interest.

To pay premiums,

a joint and several suretyship the death of one of the sureties does not by itself determine the liability of the surviving co-surety. (Beckett & Co. *v.* Addyman, 9 Q. B. D. 783.)

Rights of co-sureties where one obtains a counter security.

If one of several co-sureties obtains a counter security from the principal debtor, he is bound to bring all money received under it into hotchpot for the benefit of the other co-sureties; and when a co-surety has handed over to the others their share of the money received, he will be again entitled to recover out of the counter security the amount so handed over, whereupon their right to participate again arises, and so *toties quoties*, so that in effect the counter security enures for the benefit of all the sureties to the full extent of the principal debt. (Berridge *v.* Berridge, 44 C. D. 168.)

Liability under joint and several covenant.

(*k*) Under the Rules of the Supreme Court, 1883, Ord. XVI. r. 6, a plaintiff may, at his option, join as parties to the action all or any of the persons severally, or jointly and severally, liable on any one contract. (See Lloyd *v.* Dimmack, 7 C. D. 398.)

POLICY OF ASSURANCE WHERE SURETIES JOIN.

to effect a new policy on the life of the said A. B. in lieu of such void policy in the name or names of the said G. H., his executors, administrators, or assigns, in the sum of £—— at least, and to pay all expenses of and incidental to the effecting of any such new policy, and all premiums and other sums of money payable for keeping on foot the same, and also to deliver to the said G. H., his executors, administrators, or assigns, the receipt for every premium payable as aforesaid within seven days after the same premium shall become due: AND THAT it shall be lawful for the said G. H., his executors, administrators, or assigns, to keep on foot the hereinbefore recited policy, or to effect and keep on foot any such new policy as aforesaid (as the case may require), in the event of the covenantors omitting to do so, and in that case all moneys expended by him or them for that purpose, with interest for the same after the rate of £5 per cent. per annum, computed from the time or respective times of paying or advancing the same, shall be repaid to him or them by the covenantors, or some or one of them, on demand: AND IT IS HEREBY AGREED and declared that the hereinbefore recited policy of assurance and every new policy to be effected as aforesaid shall stand charged with the payment to the said G. H., his executors, administrators, or assigns, of the said principal sum of £——, and the interest thereof according to the foregoing covenant in that behalf, and also with the repayment of all moneys which shall be expended by him or them in or about the keeping on foot or effecting any policy as aforesaid, and the interest which shall become due in respect thereof, and subject thereto shall be held in trust for the said A. B.: PROVIDED ALWAYS, and it is hereby agreed and declared, that any neglect or forbearance of the said G. H., his executors, administrators, or assigns, in endeavouring to obtain payment of the principal moneys and interest intended to be hereby secured, or in putting in force any of his or their remedies for the same, and any time which may be given by him or them to the said A. B., or to either of them the said C. D. and E. F., shall not in any way prejudice or affect the joint and several covenants hereinbefore contained, or the continuing liability of the covenanting parties or any of them by virtue thereof, any rule of law or equity to the contrary notwithstanding.

and deliver receipts to mortgagee.

Power to mortgagee to keep on foot policy and effect new policy in case of default by mortgagor.

Sums expended by mortgagee in keeping on foot or effecting policies, with interest, to be repaid.

Declaration that policy shall be charged with principal money and interest and sums expended.

Proviso that forbearance by mortgagee shall not put an end to the liability of sureties.

IN WITNESS, &c.

No. XXIX.

LIFE INTEREST IN PERSONALTY AND POLICY.

MORTGAGE *of a* LIFE INTEREST IN PERSONALTY *and a* POLICY *of* ASSURANCE (*l*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS under or by virtue of an indenture dated, &c., and made, &c., being the settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said A. B. and E., now his wife (then E. F.), the said A. B. is entitled to receive during his life the dividends, interest, and annual produce to arise from the trust funds settled by the said indenture, which trust funds now consist of the sum of £—— £2¾ per Cent. Consolidated Stock, standing in the names of M. N. and O. P. (the trustees of the said indenture) in the books of the Governor and Company of the Bank of England, and the sum of £—— invested in the names of the same trustees on mortgage of real estates situate in the county of ——: AND WHEREAS (*Recite policy of assurance in the name of A. B., supra*, p. 405, *and agreement for mortgage, supra*, p. 517): NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant to pay principal money and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the dividends, interest, and annual produce to arise and become payable during the life of the said A. B., from the said sum of £—— £2¾ per Cent. Consolidated Stock, and the said sum of £—— invested on mortgage as aforesaid, or other the trust funds for the time being subject to the said indenture of settlement: AND ALSO the said policy of assurance, and the moneys assured by and to become payable under the same: TO HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the

Recite settlement under which mortgagor is entitled to a life interest in trust funds.

Policy of assurance on life of mortgagor.

Witnessing part.

Mortgagor assigns life interest in trust funds and policy to mortgagee.

Proviso for redemption.

(*l*) Notice of this mortgage should be given to the trustees of the recited settlement and to the assurance office as soon as the deed is executed.

—— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said premises shall be reassigned unto the said A. B., at his expense, or as he shall direct: AND THE SAID A. B. hereby covenants, &c. (*Covenants as to policy as in Precedent No. XXVII.*, p. 540, *adding in the last clause the words* "dividends, interest, and annual produce" *before* "policy of assurance and premises.") LIFE INTEREST IN PERSONALTY AND POLICY.

IN WITNESS, &c.

No. XXX.

MORTGAGE *of a* LIFE ESTATE *in* LANDS *and of* POLICIES *of* ASSURANCE *to* TWO PERSONS *subject to a* PRIOR MORTGAGE. LIFE ESTATE IN LANDS AND POLICIES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*mortgagees*), of the other part: WHEREAS under the will of ——, dated, &c., the said A. B. is seised for an estate during his life without impeachment of waste of the hereditaments intended to be hereby demised, and the said A. B. is also possessed of the several policies of assurance on his life intended to be hereby assigned, subject as to the said hereditaments and policies to an indenture dated the —— day of ——, and made between the said A. B. of the one part, and G. H. of, &c., of the other part, whereby the said hereditaments were demised by the said A. B. unto the said G. H. for the term of ninety-nine years, without impeachment of waste, if he the said A. B. should so long live, and the said policies were assigned by the said A. B. unto the said G. H. by way of mortgage for securing the payment of the principal sum of £——, with interest for the same, and which principal sum still remains due and owing, but all interest for the same has been duly paid up to the —— day of —— last (*Agreement for loan, supra*, p. 517): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to*

Parties.

Recite that mortgagor is entitled to life estate in lands and to policies of assurance on his life,

subject to prior mortgage.

LIFE ESTATE IN LANDS AND POLICIES.

pay principal money and interest, supra, p. 511): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F. ALL the messuages, lands, tenements, and hereditaments, situate in the parish of ——, in the county of ——, described in the first schedule hereto, AND ALL other (if any) the messuages, lands, tenements, and hereditaments devised by the said will of the said —— TO HOLD the same unto the said C. D. and E. F. from the date of these presents, for the term of one hundred years thence next ensuing, if the said A. B. shall so long live, subject to the said indenture of the —— day of —— and the said principal sum of £—— due and owing by virtue thereof as aforesaid and the interest for the same, and subject also to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. and E. F., THE SEVERAL policies of assurance on the life of the said A. B. described in the second schedule hereto, and the several moneys assured by and to become payable under or by virtue of the said policies respectively: TO HOLD the same unto the said C. D. and E. F. subject to the said indenture of the —— day of —— and the said principal sum of £—— due and owing by virtue thereof and the interest for the same, and subject also to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said hereditaments, policies, moneys, and premises hereby demised and assigned respectively, shall be respectively surrendered and reassigned unto the said A. B. at his expense: AND the said A. B. hereby covenants with the said C. D. and E. F. that he the said A. B. will not do any act, or commit any default, whereby the said policies of assurance hereby assigned, or any of them, may be rendered void or voidable: AND IN CASE the said policies, or any policy or policies to be effected as hereinafter mentioned, shall by any means become void, then will forthwith, at his own cost, effect a new policy or new policies on his life, in lieu of such void policy or policies, in the names of the said C. D. and E. F., their executors, administrators, or

Mortgagor demises lands

to mortgagees for term of 100 years, if mortgagor shall so long live,

subject to prior mortgage.

Mortgagor assigns policies

to mortgagees.

Proviso for redemption.

Covenant by mortgagor not to vitiate policies,

and to renew same if they become void,

assigns, in some office to be approved by them, in a sum or sums not less in amount than the sum or sums assured by the policy or policies which shall have become void as aforesaid (including any bonus or bonuses which may have been declared thereon), and that every such new policy shall be subject to the like right of redemption as the policies of assurance hereby assigned: And will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policies hereby assigned, or any new policy or policies to be effected as aforesaid, and deliver to the said C. D. and E. F., their executors, administrators, or assigns, the receipt for every such premium within seven days after the same shall become due: And if default shall be made by the said A. B. in keeping on foot the said policies hereby assigned, or in effecting or keeping on foot any such new policy or policies, then and in such case the said C. D. and E. F., their executors, administrators, or assigns, may keep on foot the said policies, or effect and keep on foot such new policy or policies as aforesaid, as the case may require, if they shall think fit so to do: And in that case all moneys expended by them for that purpose, with interest thereon after the rate of £5 per cent. per annum computed from the time or respective times of paying or advancing the same, shall be repaid by the said A. B. on demand and shall in the meantime be charged on the hereditaments and policies of assurance for the time being subject to this security, in addition to the said principal sum of £—— and the interest thereof. (*Declaration as to leasing power, if desired, supra*, p. 512.)

LIFE ESTATE IN LANDS AND POLICIES.

and to pay premiums, and to deliver receipts;

and in case of mortgagor's default, mortgagee may keep up policies,

and that mortgagor will pay moneys advanced by mortgagees for insurance.

Security to include moneys advanced by mortgagee for insurance.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

No. XXXI.

TO SECURE RE-TRANSFER OF STOCK.

MORTGAGE *of* FREEHOLDS *to secure the re-transfer of* STOCK, *and the Payment in the meantime of such Sums as may be equal to the* DIVIDENDS *thereof* (*m*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS the said C. D. hath

Agreement for advance of proceeds of consols.

agreed to lend to the said A. B. the sum of £—— (being the proceeds of the sale of the sum of £—— £2$\frac{3}{4}$ per Cent. Consolidated Stock, recently standing in the name of the said C. D., in the books of the Governor and Company of the Bank of England), upon having the transfer of a like sum of £—— £2$\frac{3}{4}$ per Cent. Consolidated Stock into the name of the said C. D., and the payment in the meantime of an annual sum in lieu of the dividends of the said stock secured to the said C. D. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— (being the proceeds of the sale of the said sum of £—— £2$\frac{3}{4}$ per Cent. Consolidated Stock) paid to the said A. B. by the said C. D. on or before the execution of these presents (*the receipt, &c.*) the said A. B. hereby covenants with the said

Covenant by mortgagor to transfer stock, and to pay in the meantime sums equal to dividends.

C. D. to transfer, or cause to be transferred, into the name or names of the said C. D., his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— £2$\frac{3}{4}$ per Cent. Consolidated Stock, and in the meantime, until the said stock shall be so transferred, to pay unto the said C. D., his executors, administrators, or assigns, such sums of money as shall be equal in amount to the dividends which the said C. D., his executors, administrators, and assigns, would have been entitled to receive on account of the said stock, if the same had continued standing in the name of the said C. D., such

Conveyancing Act applies to mortgages to secure stock.

(*m*) The provisions relating to mortgages in the Conveyancing Act, 1881, including the statutory power of sale, apply to a mortgage to secure stock, stock being included in the expression "money's worth." (See sect. 2, sub-sect. 6.)

payments to be made at such times as the said dividends would have become payable: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, &c. (*Conveyance to mortgagee in fee*): PROVIDED ALWAYS, that if the covenant of the said A. B. hereinbefore contained shall be duly performed, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be re-conveyed to him or them. (*Declaration as to leasing power if desired, supra*, p. 507.)

IN WITNESS, &c.

TO SECURE RE-TRANSFER OF STOCK.

Proviso for redemption.

No. XXXII.

MORTGAGE *to secure the* RE-TRANSFER *of* STOCK *lent, and* PAYMENT *of* INTEREST *on* PROCEEDS *in the* MEANTIME.

TO SECURE RE-TRANSFER OF STOCK AND INTEREST ON PROCEEDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c (*mortgagee*), of the other part: WHEREAS the said C. D. hath agreed to sell the sum of £—— £2¾ per Cent. Consolidated Stock, belonging to him, and to pay the proceeds of such sale to the said A. B. upon having a transfer of a like sum of £—— £2¾ per Cent. Consolidated Stock, and the payment in the meantime of interest on the proceeds of the said sale after the rate of £—— per cent. per annum, secured to the said C. D. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*as in last Precedent*), THE SAID A. B. hereby covenants with the said C. D. to transfer or cause to be transferred into the name or names of the said C. D., his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— £2¾ per Cent. Consolidated Stock, and at the same time to pay to him or them interest for the said sum of £—— (*proceeds of sale of stock*), after the rate of £—— per cent. per annum, computed from the date

Parties.

Agreement for advance.

Covenant to transfer stock,

and to pay interest on proceeds.

TO SECURE RE-TRANSFER OF STOCK AND INTEREST ON PROCEEDS.

of these presents: And if the said sum of £—— £2$\frac{3}{4}$ per Cent. Consolidated Stock shall not be transferred as aforesaid on the said —— day of —— next, then to pay to him or them interest after the rate aforesaid, for the said sum of £—— (*proceeds of sale*), or for such sum as shall bear the same proportion to the said sum of £—— (*proceeds of sale*) as the £2$\frac{3}{4}$ per Cent. Consolidated Stock for the time being owing on the security of these presents shall bear to the said sum of £—— like stock, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year until the whole of the last-mentioned sum of £2$\frac{3}{4}$ per Cent. Consolidated Stock shall have been transferred as aforesaid: AND THIS INDENTURE ALSO WITNESSETH, &c. (*as in last Precedent to the end*).

IN WITNESS, &c.

No. XXXIII.

CONVEYANCE WHERE PART OF PURCHASE-MONEY IS SECURED BY MORTGAGE.

CONVEYANCE *of* FREEHOLDS *where part of the* PURCHASE-MONEY *is retained by the* PURCHASER, *and secured by a* MORTGAGE *for a* TERM *of* YEARS *to the* VENDOR (*n*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:

Recite agreement for sale.

WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the hereditaments hereinafter described, at the price of £500:

Part of purchase-money to remain due

AND WHEREAS upon the treaty for the said purchase it was agreed that the sum of £200,

Best arrangement where part of purchase-money is retained on mortgage.

(*n*) It is generally more convenient to have two deeds to carry out an arrangement for retaining a part of the purchase-money on mortgage of the purchased property, viz. (1), the conveyance to the purchaser in the usual form; and (2), a mortgage in the usual form from the purchaser to the vendor, executed immediately after the deed of conveyance. Sometimes, however, it is wished to effect the whole arrangement in one deed, and in that case the above Precedent may be adopted. It will be observed that the mortgage is for a term of years, it being assumed that the mortgage is only for a temporary purpose, and is likely to be shortly paid off.

part of the said purchase-money, should remain in the hands of the said C. D., and that the payment thereof with interest should be secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £300, part of the said purchase-money of £500, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the sum of £200, being the remainder of the said purchase-money, secured to be paid to the said A. B. as hereinafter mentioned, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto the said C. D. in fee simple: TO THE USE of the said A. B., for the term of 500 years, computed from the day of the date of these presents, subject nevertheless to the proviso for the cesser of the said term hereinafter contained, and from and after the determination of the said term, and in the meantime subject thereto, TO THE USE of the said C. D. in fee simple: PROVIDED ALWAYS, that if the said C. D. shall, on the —— day of —— next, pay to the said A. B. the sum of £200, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case and immediately after such payment the said term of 500 years shall cease and determine. (*Covenants by C. D. for payment of principal and interest, supra*, p. 506.)

IN WITNESS, &c.

CONVEYANCE WHERE PART OF PURCHASE-MONEY IS SECURED BY MORTGAGE.

on security of freeholds.

Conveyance by vendor of parcels.

To hold to purchaser to use of vendor, to secure unpaid purchase-money, and then to use of purchaser in fee.

No. XXXIV.

CONVEYANCE *of* FREEHOLDS, *by direction of* PURCHASER *to a* MORTGAGEE *to secure part of the* PURCHASE-MONEY (*o*).

MORTGAGE TO SECURE PART OF PURCHASE-MONEY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*purchaser*), of the second part, and E. F. of, &c. (*mortgagee*), of the

Parties.

(*o*) See the note to the last Precedent.

MORTGAGE TO SECURE PART OF PURCHASE-MONEY.

third part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the hereditaments hereinafter described at the price of £1,000: AND WHEREAS the said C. D., having occasion for the sum of £600 in order to enable him to complete the said purchase, hath requested the said E. F. to advance the said sum for that purpose, which he hath agreed to do on having the repayment thereof, with interest, secured in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £400 to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the sum of £600 to the said A. B. at the same time paid by the said E. F., by the direction of the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, at the request of the said C. D., hereby conveys unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple: PROVIDED ALWAYS, that if the said C. D. shall on the —— day of —— next pay to the said E. F. the sum of £600, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the said hereditaments and premises shall, at the request and cost of the said C. D., his heirs or assigns, be conveyed to him or them. *Covenant by C. D. with E. F. to pay principal and interest, supra*, p. 506. *Declaration as to leasing power, if desired, supra*, p. 507.)

Agreement for sale.

Agreement to lend part of purchase-money.

Considera-tion.

Vendor, by direction of purchaser, conveys to mortgagee.

Proviso for redemption.

IN WITNESS, &c.

No. XXXV.

MORTGAGE DEBT AND SECURITIES.

MORTGAGE *of a* MORTGAGE DEBT *and the* SECURITY (*o*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c.

(*o*) Notice of this assignment should be given to the mortgagor, X. Y.

(*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between X. Y. of, &c., of the one part, and the said A. B. of the other part, ALL, &c. (*parcels*), were conveyed by the said X. Y. unto and to the use of the said A. B. in fee simple, subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said X. Y. to the said A. B. of the sum of £1,000, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— then next: AND WHEREAS the said principal sum of £1,000 still remains owing to the said A. B. upon the security of the said indenture, with an arrear of interest thereon (*Recite agreement for loan*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE SAID A. B. hereby covenants, &c. (*covenants to pay principal money and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE principal sum of £1,000 now due and owing to the said A. B. upon the security of the said indenture of mortgage of the —— day of ——, 18—, and all interest now due and henceforth to become due for the same, and the benefit of all securities for the same (including the statutory power of sale), TO HOLD the same unto the said C. D., subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, THE said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the hereditaments and premises comprised in and conveyed by the said indenture of mortgage: TO HOLD the same unto and to the use of the said C. D. in fee simple, subject to such right or equity of redemption as the same are now subject to by virtue of the said indenture, and also subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said principal sum and interest, hereditaments and premises hereinbefore assigned and conveyed respectively, shall at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned and reconveyed to him the said A. B.,

MORTGAGE DEBT AND SECURITIES.

Recite mortgage.

That principal sum remains due.

Witnessing part.

Covenant to pay principal and interest.

Mortgagor assigns mortgage debt.

Mortgagor conveys mortgaged premises

to mortgagee.

Proviso for redemption.

MORTGAGE DEBT AND SECURITIES.

his heirs, executors, administrators, or assigns, subject as to the said hereditaments and premises to such right or equity of redemption (if any) as shall for the time being be subsisting therein under or by virtue of the said indenture of mortgage: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall not be incumbent on the said C. D., his executors, administrators, or assigns, to sue for or require payment of the said principal sum and interest hereby assigned, or any part thereof, unless he or they shall think fit so to do, nor shall he or they be responsible for any loss which may arise by reason of his or their omission or delay to enforce any of the said securities for the said principal sum and interest, or any part thereof.

Provision for indemnity of mortgagee.

IN WITNESS, &c.

No. XXXVI.

TO SECURE EXISTING DEBT AND FUTURE ADVANCES.

MORTGAGE *of* FREEHOLDS *to secure an* EXISTING DEBT *and* FUTURE ADVANCES (*p*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS the said A. B. is indebted to the said C. D. in the sum of £1,000: AND WHEREAS the said A. B. hath agreed to secure the repayment of the said sum of £1,000, and also of any further sum or sums of money which may hereafter be advanced to him by the said C. D., with interest for the same respectively, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next, the sum of £1,000, with interest for the same after the rate of £—— per cent. per annum, computed from the date

Parties.

Recite that mortgagor is indebted and agreement for security.

Covenant by mortgagor to pay principal and interest,

(*p*) This instrument will be chargeable with an *ad valorem* duty of 2*s.* 6*d.* per cent. in respect of the sum of £1,000, and will be a security in respect of the further advances for such an amount as the additional duty will extend to cover.

of these presents: AND ALSO to pay to the said C. D. such sum or sums of money as may hereafter be advanced by the said C. D. to the said A. B., with interest thereon after the rate aforesaid, computed from the time or respective times of advancing the same, such payment to be made on the —— day of ——, or the —— day of ——, which shall first happen after the principal money shall have been advanced as aforesaid: AND ALSO so long as any principal money hereinbefore covenanted to be paid shall remain unpaid after the day hereby appointed for payment thereof to pay to the said C. D. interest thereon after the rate aforesaid, on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the principal sum or sums of money hereinbefore covenanted to be paid, with interest thereon, shall be duly paid at the time or times hereinbefore appointed for payment thereof, then and in such case the said premises shall, at the request and cost of the said A. B., be re-conveyed to him in fee simple. (*Declaration as to leasing power, if desired, supra*, p. 507.)

TO SECURE EXISTING DEBT AND FUTURE ADVANCES.

and to repay further advances and interest thereon.

Conveyance to mortgagee, subject to redemption.

IN WITNESS, &c.

INDORSEMENT *to be* MADE *on the* ABOVE DEED *on the occasion of a* FURTHER ADVANCE.

I HEREBY ACKNOWLEDGE to have this day received from the within-named C. D. the sum of £——, being a further sum advanced on the within-mentioned security.

DATED this —— day of ——.

A. B.

No. XXXVII.

TO BANKING COMPANY TO SECURE ACCOUNT CURRENT.

MORTGAGE *of* Freeholds *to a* Banking Company *to secure* Balance of Account Current (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (hereinafter called "the mortgagor"), of the one part, and the —— Banking Company (hereinafter called "the company"), of the other part, WITNESSETH that the mortgagor hereby covenants with the company that he, the mortgagor, will on demand, or if no demand is made in his lifetime, then his heirs, executors, or administrators, will, on his death, pay to the company the balance then owing from the mortgagor on his account current with the company for cheques, notes, or bills, drawn, accepted, or indorsed by him, or for advances made to him, or for his accommodation or benefit, or otherwise howsoever (including interest with half-yearly rests, commission, and other customary charges), and will also pay interest on such balance from the date of such demand or death (as the case may be), after the rate of £5 per cent. per annum:

Covenant by mortgagor with company to pay moneys owing on account current.

Conveyance of freeholds to company.

Proviso for redemption.

AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys unto the company, All, &c. (*parcels*): To hold the same unto the company, in fee simple: Provided always that if all moneys hereinbefore covenanted to be paid shall be duly paid accordingly, then the said hereditaments and premises shall, at the request and cost of the mortgagor, his heirs or assigns, be re-conveyed to him or them: And the mortgagor hereby covenants with the company that he will at all times during the continuance of this security keep the buildings on the mortgaged premises insured against loss or damage by fire in their full value, and will, on demand, produce to the company the policy of such insurance and the receipt for every premium

Covenant by mortgagor for insurance.

(*a*) This instrument will be a security for such an amount as the duty at 2*s.* 6*d.* per cent. will extend to cover.

payable for that purpose: AND IT IS HEREBY DECLARED that any demand for payment of the balance intended to be hereby secured may be made by a notice in writing signed by any director, manager, or cashier, on behalf of the company, and such notice shall be deemed to be sufficiently served on the mortgagor if it is left at his usual or last known place of abode or business in the United Kingdom, or affixed or left for him on any house, building, or land hereby conveyed, or if it is sent by post in a registered letter addressed to him at his usual or last known place of abode or business, and in the last-mentioned case the service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered: AND IT IS ALSO DECLARED that the power of sale conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, shall take effect as regards these presents as if sect. 20 had been omitted from the said Act, but the said power shall not be exercised unless default is made in payment of the said balance or part thereof for one calendar month after it has become payable under the foregoing covenant in that behalf; And upon any sale made under the said statutory power, a statutory declaration by a director, manager, or cashier of the company that payment of the balance has been duly demanded and not paid, shall be conclusive evidence of such demand and non-payment, in favour of any purchaser or other person deriving title to the said premises under such sale. (*Declaration as to leasing power if desired, supra*, p. 507.)

IN WITNESS, &c.

TO BANKING COMPANY TO SECURE ACCOUNT CURRENT.

Clause as to how notice demanding payment is to be served.

Statutory power of sale to apply, with a variation.

No. XXXVIII.

MORTGAGE *to* TRUSTEES *for* UNINCORPORATED BANKING COMPANY *to secure* BALANCE *of* ACCOUNT CURRENT.

TO TRUSTEES FOR BANKING COMPANY TO SECURE ACCOUNT CURRENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. and E. F. of, &c., trustees of the —— Banking Company, of

Parties.

TO TRUSTEES FOR BANKING COMPANY TO SECURE ACCOUNT CURRENT.

the other part, WITNESSETH, that the said A. B. (hereinafter called the mortgagor), hereby covenants with the said C. D. and E. F. that he the mortgagor will, &c. (*same as last Precedent to beginning of second testatum, supra*, p. 556): AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D. and E. F. in fee simple (*proviso for redemption, and clauses as to notice and as to statutory power of sale as in last Precedent, supra*, pp. 556, 557): AND IT IS HEREBY AGREED AND DECLARED, that if at any time or times during the continuance of this security the hereditaments and premises hereby conveyed shall be conveyed to any other persons or person as trustees or a trustee of the said company, for the purposes of this security, so as to vest in them or him, either solely or jointly with the trustees or trustee by whom such conveyance shall be made, then and in every such case the persons or person in whom the said hereditaments and premises shall for the time being be vested as aforesaid shall and may have and exercise the statutory power of sale and all other powers vested in the said C. D. and E. F., as fully and effectually as if they or he had been named herein, instead of the said C. D. and E. F., and the statement in any deed by which the said hereditaments and premises shall or may be conveyed as aforesaid that the persons or person to whom the same shall be thereby conveyed are or is trustees or a trustee of the said company shall be conclusive evidence of the fact so stated, and no purchaser or other person deriving title to the said hereditaments and premises, or any part thereof, through any act of the persons or person to whom such statement shall relate, shall be bound or concerned to see or inquire whether the same persons or person shall have been duly and properly constituted such trustees or trustee: AND IT IS HEREBY ALSO AGREED AND DECLARED, that the acknowledgment by the persons or person in whom the hereditaments and premises hereby conveyed shall for the time being be vested for the purposes of this security, or by any two directors of the said company, that the moneys hereby secured have been fully satisfied, shall be conclusive evidence that the same have been satisfied accordingly: AND IT IS HEREBY LASTLY AGREED AND DECLARED, that these presents shall be a security to the said

Covenant to pay principal and interest.

Mortgagor conveys to company.

Power of sale and other powers may be exercised by any persons in whom property may become vested as trustees of the company.

Acknowledgment by trustees, or by two directors, to be conclusive evidence that moneys are satisfied.

Security to extend to future shareholders of company.

banking company for the moneys hereby secured, of whatever shareholders or partners the said company may from time to time consist, and under whatever style or firm the banking business now carried on by the said company may for the time being be carried on. (*Declaration as to leasing power if desired, supra*, p. 507).

TO TRUSTEES FOR BANKING COMPANY TO SECURE ACCOUNT CURRENT.

IN WITNESS, &c.

No. XXXIX.

MORTGAGE (*a*) *to a* BANKING COMPANY *of* FREEHOLDS *and* LEASEHOLDS *comprised in the* DOCUMENTS *contained in* SCHEDULE *to secure* BALANCE *of* ACCOUNT CURRENT. (*Short form*) (*b*).

MORTGAGE OF FREEHOLDS AND LEASEHOLDS COMPRISED IN DOCUMENTS IN SCHEDULE. (*Short Form.*)

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and the —— Banking Company (hereinafter called "the company") of the other part: WITNESSETH, that the said A. B. (hereinafter called the mortgagor), hereby covenants with the company (*covenant by mortgagor to pay balance on account current, supra*, p. 556): AND THIS INDENTURE ALSO WITNESSETH, that the

Parties.

Covenant by mortgagor to pay money owing on account current.

(*a*) As to the stamp this instrument will bear, see note, *supra*, p. 556.

(*b*) It may often be expedient for the company to require that a short mortgage by deed of the property comprised in the deposited documents should be executed by the borrower in preference to a mere memorandum under his hand, so that the bankers may at once obtain all the proper remedies, including a power to sell in case of default, without the necessity of any application to the Court for the purpose, and also the advantage of priority, which the acquisition of the legal estate without notice of prior equitable incumbrances may frequently afford.

Advantage of mortgage by deed over memorandum.

When the advances are large, the perfectness and efficiency of the security ought not to be sacrificed to the consideration that the mortgage deed will become a document of title, and will require a reconveyance when the debt is satisfied.

The reconveyance may be framed in a few words, and endorsed on the mortgage deed. For a form of such reconveyance and surrender, as being applicable to the present form of mortgage as soon as the debt is satisfied, see *infra*, p. 560.

Reconveyance.

MORTGAGE OF FREEHOLDS AND LEASEHOLDS COMPRISED IN DOCUMENTS IN SCHEDULE. (*Short Form.*)

mortgagor, as beneficial owner, hereby conveys and demises unto the company, THE hereditaments and property comprised in the documents set forth in the schedule hereto: To HOLD the same as to such of them as are freehold unto and to the use of the company in fee simple, and for all other the estate and interest of the mortgagor therein, and as to such of them as the mortgagor is entitled to for any term or terms of years, whether absolute or determinable, unto the company for all the residue now unexpired of the said terms of years respectively (except the last day of such terms respectively): PROVIDED ALWAYS, that if all moneys hereinbefore covenanted to be paid shall be duly paid pursuant to the foregoing covenant, the said premises shall, at the request and cost of the mortgagor, be reassured to him (*Clauses as to notice and as to statutory power of sale, supra*, p. 557): AND IT IS ALSO DECLARED that after any sale of leasehold property, the mortgagor, his executors, administrators, or assigns, shall stand possessed of the last day of the term subsisting in the property so sold under the lease thereof, IN TRUST for the purchaser, and to be assigned and disposed of as he shall direct. (*Declaration as to leasing power if desired, supra*, p. 526.)

Mortgagor conveys and demises freeholds and leaseholds comprised in documents in schedule to company as to freeholds absolutely, as to leaseholds for residue of terms except last day.

Proviso for redemption.

Statutory power of sale.

Declaration as to last day of term.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XL.

RECONVEYANCE AND SURRENDER OF FREEHOLDS AND LEASEHOLDS BY A BANKING COMPANY.

RECONVEYANCE *of* FREEHOLDS *and* SURRENDER *of* LEASEHOLDS *by a* BANKING COMPANY *on all* MONEYS *being* PAID OFF (*by deed* ENDORSED *or* WRITTEN AT THE END *of the last* MORTGAGE DEED) (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN the within [*or* above] named company of the one part, and the

Parties.

(*a*) It is apprehended that the stamp would be determined by the *ad valorem* stamp on the indenture of mortgage. In other words, the reconveyance must carry a stamp of 6*d*. for every 2*s*. 6*d*. with which the mortgage deed is stamped.

within [*or* above] named A. B. of the other part: WITNESSETH, that the said company hereby acknowledges that all moneys secured by the within [*or* above] written indenture have been paid and satisfied, and in consideration thereof the said company as mortgagee hereby conveys and surrenders unto the said A. B., ALL the hereditaments and property comprised in the within [*or* above] written indenture, as to such of them as are freehold, unto and to the use of the said A. B., in fee simple, and as to such of them as are leasehold to the intent that the derivative terms of years created by the said indenture shall cease and determine, and as to all the said hereditaments and property absolutely discharged from the moneys secured by the said indenture, and all claims and demands on account thereof.

IN WITNESS, &c.

RECONVEYANCE AND SURRENDER OF FREEHOLDS AND LEASEHOLDS BY A BANKING COMPANY.

Acknowledgment that all moneys have been paid.

Company conveys and surrenders freeholds and leaseholds to mortgagor.

No. XLI.

MORTGAGE *of* FREEHOLDS *to a* BUILDING SOCIETY (*a*).

OF FREEHOLDS TO A BUILDING SOCIETY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor"), (*mortgagor*),

Parties.

(*a*) The Act 6 & 7 Wm. 4, c. 32, for the regulation of Benefit Building Societies, is repealed by the Building Societies Act, 1874 (37 & 38 Vict. c. 42, s. 7), but the repeal does not affect any subsisting society certified under the repealed Act, until such society shall have obtained a certificate of incorporation under the new Act. Any society whose rules have been certified under the Act of Wm. 4, may obtain a certificate of incorporation under the new Act (38 Vict. c. 9, s. 2); and every subsisting or future society, upon receiving a certificate of incorporation, becomes a body corporate by its registered name (37 & 38 Vict. c. 42, s. 9).

The Building Societies Act, 1874.

Any society may, from time to time, as the rules permit, invest any portion of its funds upon real or leasehold securities, or other specified securities. (Sect. 25.)

Whenever a member of a society having executed a mortgage to the society dies intestate, leaving an infant heir, the society, after selling the mortgaged property, may pay to his administrator the surplus proceeds of the sale to the amount of £150, without paying it into the Post Office Savings Bank under 30 & 31 Vict. c. 142, s. 24. (Sect. 30.)

Sect. 41 exempts from stamp duty the rules of the society and other documents therein mentioned, but provides that the exemption shall not extend to any mortgage.

See the Building Societies Act, 1875 (38 Vict. c. 9); the Building Societies Act, 1877 (40 & 41 Vict. c. 63); and the Building Societies Act, 1884 (47 & 48 Vict. c. 41).

OF FREEHOLDS TO A BUILDING SOCIETY.

of the one part, and the —— Benefit Building Society, incorporated under the "Building Societies Act, 1874" (hereinafter called "the said society"), (*mortgagees*), of the other part: WHEREAS the mortgagor is the owner of —— shares in the said society, numbered respectively ——, and he is by the rules of the said society entitled to an advance of £—— in respect of each of the said shares, making an aggregate advance of £——, on his executing the mortgage hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the mortgagor paid by the said society on or before the execution of these presents (the receipt whereof the mortgagor hereby acknowledges), the mortgagor, as beneficial owner, hereby conveys unto the said society, ALL THOSE, &c. (*parcels*): TO HOLD the same unto and to the use of the said society in fee simple, UPON TRUST, to permit the mortgagor to hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof, so long as the mortgagor shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the said society, and shall in all respects duly observe the said rules, and also the covenants and provisions hereinafter contained which ought on his part to be observed and performed: BUT IN CASE the mortgagor shall at any time fail for three calendar months to pay the said subscriptions and other sums of money, or any of them, or shall at any time fail in other respects to observe and perform the said rules, covenants, and provisions, or any of them, then and in any or either of the said cases it shall be lawful for the said society at any time thereafter to take possession of the said hereditaments and premises, and to let the same for any term, and upon such conditions as they shall think fit, and to appoint any person or persons, at such remuneration as they shall think proper, to collect the rents and profits of the said hereditaments and premises on behalf of the said society until sale thereof, and also at the discretion of the said society, without giving any previous notice in that behalf to the mortgagor, to sell the said hereditaments and premises, with all such powers as regards the mode of sale and otherwise as are by the Conveyancing and Law of Property Act, 1881, annexed to the power of sale conferred by that Act on mortgagees: AND

Advance mortgagor is entitled to in respect of his shares.

Consideration paid by society to mortgagor.

Mortgagor conveys parcels to society,

upon trust to permit mortgagor to enjoy the hereditaments so long as payments are duly made and covenants are duly performed.

But in case of default, society may take possession of or let hereditaments, and appoint a receiver,

and sell hereditaments.

OF FREEHOLDS TO A BUILDING SOCIETY.

IT IS HEREBY DECLARED that the said society shall, with and out of any rents or sale moneys received by them as aforesaid, in the first place retain and pay all costs, charges, and expenses incurred by them in relation to this security; and in the next place shall retain all subscriptions, fines, and other moneys then due, or which may thereafter become due in respect of the said shares or under this security: AND shall pay the surplus (if any) to the mortgagor: AND IT IS HEREBY DECLARED, that upon any lease or sale made by the said society under any of the aforesaid powers in that behalf, the lessee or purchaser shall not be bound or concerned to see or inquire whether any of the cases have happened in which such lease or sale is hereinbefore authorized to be made, or otherwise as to the propriety of such lease or sale, or be affected by notice that no such case as aforesaid has happened, or that the lease or sale is otherwise improper: AND IT IS HEREBY ALSO DECLARED that no lease made by the mortgagor of the said premises during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said society shall consent thereto in writing: AND the mortgagor hereby covenants with the said society, THAT he the mortgagor will from time to time make the several payments, and observe and perform the rules for the time being in force of the said society in respect of the said shares which on his part ought to be paid, observed, and performed: AND ALSO will at all times during the continuance of this security keep the said hereditaments and premises in good, substantial, and complete repair and condition, and also keep the same insured against loss or damage by fire in the sum of £—— at least, and will, on demand, produce to the said society the policy of such insurance, and the receipt for every premium payable in respect thereof: PROVIDED ALWAYS, that the powers hereby conferred on the said society are in addition to all other powers and remedies vested in the said society under the rules and regulations thereof, or by statute, for recovering or enforcing payment of the moneys intended to be hereby secured: AND IT IS HEREBY DECLARED that, where the context allows, the expression "the mortgagor" used in these presents includes, besides the said A. B., all persons deriving title under him.

Rents and sale moneys to be applied in payment of costs, then in payment of subscriptions, fines, &c.

Surplus to be paid to mortgagor.

Lessees and purchasers not bound to inquire as to default.

Declaration as to leasing power.

Covenants by mortgagor that he will make the payments and observe the rules;

that he will keep the premises in good repair, and insured against fire.

Proviso that powers conferred are in addition to other powers and remedies.

Interpretation of term "mortgagor."

IN WITNESS, &c.

No. XLII.

OF LEASEHOLDS TO A BUILDING SOCIETY.

MORTGAGE *of* LEASEHOLDS *to a* BUILDING SOCIETY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor") (*mortgagor*), of the one part, and the —— Building Society, incorporated under the Building Societies Act, 1874 (hereinafter called "the said society") (*mortgagees*), of the other part: WHEREAS by an indenture of lease, dated, &c., and made, &c. (*date and parties*), all that piece or parcel of ground (*parcels as in lease*) were demised unto the mortgagor, his executors, administrators, and assigns, for the term of ninety-nine years from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed: AND WHEREAS, &c. (*Recite that mortgagor is entitled to advance in respect of his shares, supra*, p. 562): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the mortgagor by the said society on or before the execution of these presents (the receipt whereof the mortgagor hereby acknowledges), the mortgagor, as beneficial owner, hereby demises unto the said society, the piece or parcel of ground and premises, comprised in and demised by the said indenture of lease: TOGETHER WITH the messuage or dwelling-house and buildings lately erected and built thereon: TO HOLD the same unto the said society during all the residue now unexpired of the said term of ninety-nine years (except the last day of the said term): UPON TRUST to permit the mortgagor to hold and enjoy the said premises, and receive the rents and profits thereof so long as the mortgagor shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the said society, and shall in all respects duly observe the said rules, and shall also pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions therein contained which ought on the lessee's part to be observed and performed: BUT IN CASE he shall at any time fail for three

Recite indenture of lease.

Mortgagor demises leasehold parcels

to society for residue of term (less one day).

In trust for mortgagor until default in making the payments.

In case of

OF LEASEHOLDS TO A BUILDING SOCIETY.

calendar months to pay the said subscriptions and other sums of money, or any of them, or shall at any time fail in other respects to observe and perform the said rules, covenants, and conditions, or any of them, then and in any or either of the said cases (*society may take possession, let, appoint receiver, and sell, supra*, p. 562), AND IT IS HEREBY DECLARED that the said society shall out of any rents or sale moneys received by them as aforesaid in the first place retain and pay all costs, charges, and expenses incurred by them in relation to this security, including any costs, charges, or expenses which may be incurred in preserving the said premises from forfeiture, by paying the rent, or performing the covenants on the lessee's part reserved and contained by and in the said indenture of lease, AND in the next place shall retain all subscriptions, fines, and other moneys which shall then be due, or which may thereafter become due in respect of the said shares or under this security, and shall pay the surplus (if any) to the mortgagor (*Lessees and purchasers not bound to inquire as to default, supra*, p. 563): AND IT IS HEREBY DECLARED that after any sale made by the said society, the mortgagor shall hold the premises sold for the last day of the term granted therein by the said indenture of lease, in trust for the purchaser, and to be assigned and disposed of as he may direct (*Declaration as to leasing power, supra*, p. 563): AND THE mortgagor hereby covenants with the said society to pay the subscriptions and other sums which ought from time to time to be paid in respect of the said shares according to the rules for the time being of the said society, and in all respects to observe the said rules (*a*): (*Proviso that powers given by this deed are in addition to other powers and remedies. Interpretation of term "the mortgagor," supra*, p. 563).

default society may take possession and let or sell.

Declaration as to application of rents and sale moneys.

Trust of last day of term after a sale.

Covenants by mortgagor to make payments.

IN WITNESS, &c.

(*a*) It is assumed that the lease contains covenants to repair and insure, in which case it is unnecessary to insert any such covenants in the mortgage, because they will be covered by the covenants implied under sect. 7 of the Conveyancing Act, 1881, to observe the covenants in the lease.

No. XLIII.

OF FREEHOLDS OR LEASEHOLDS TO A BUILDING SOCIETY.

MORTGAGE *of* FREEHOLDS *or* LEASEHOLDS (*a*) *to a* BUILDING SOCIETY. (*A form adapted to the Conveyancing Act*, 1881.)

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor"), of the one part, and The —— Building Society, incorporated under the Building Societies Act, 1874 (hereinafter called "the said society") of the other part: WITNESSETH that in consideration of the sum of £——, now paid to the mortgagor out of the funds of the said society, being the advance to which he is entitled under the rules of the society in respect of —— shares held by him (the receipt whereof the mortgagor hereby acknowledges) the mortgagor hereby covenants with the said society, that he the mortgagor will duly and punctually pay all the subscriptions and other moneys, and duly observe all the regulations which, according to the rules of the said society for the time being in force, ought to be paid and observed by him in respect of his said shares, or the —— advance now made to him as aforesaid, or in respect of the hereditaments intended to be hereby conveyed [*or* demised]: AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid, the mortgagor as beneficial owner hereby conveys [*or* demises] unto the said society; THE hereditaments described in the schedule hereto: TO HOLD the same unto and to the use of the said society in fee simple [*or* unto the said society for the residue of the term of years granted therein by the indenture of lease mentioned in the said schedule except the last day thereof]; PROVIDED ALWAYS that if the mortgagor shall duly make all the payments and observe all the regulations hereinbefore covenanted to be made and observed by him, then these presents shall be vacated by a receipt to be endorsed thereon pursuant to section 42 of the above-mentioned Act: AND IT IS HEREBY DECLARED that the said society shall permit the mortgagor to retain possession of

In consideration of sum now paid.

Mortgagor covenants to pay subscriptions, &c.

Mortgagor conveys freeholds or demises leaseholds to society.

Proviso for vacating the deed.

Declaration that society shall permit

(*a*) The alterations to be made if the property is leasehold are inserted within brackets.

OF FREEHOLDS OR LEASEHOLDS TO A BUILDING SOCIETY.

the said premises so long as he shall duly make the payments and observe the regulations aforesaid, but if he shall make default in the payment of any monthly subscription or other money payable by him under the said rules or the foregoing covenant for the space of three calendar months after the same shall have become due, or shall commit any other breach of the said rules, then and in either of such cases the said society may at any time thereafter enter into possession of the said premises: AND IT IS HEREBY ALSO DECLARED, by way of variation of the provisions contained in the Conveyancing and Law of Property Act, 1881, relating to the powers of sale and of appointing a receiver conferred by section 17 of that Act, that the said powers may be exercised by the said society at any time hereafter, if at the time of the exercise thereof any case shall have happened in which the said society is hereinbefore authorized to take possession of the said premises, and it shall not be necessary to give any such notice to the mortgagor as is mentioned in section 20 of the said Act: AND ALSO that any receiver to be appointed under the said power in that behalf may, with and out of the moneys received by him in that capacity, pay the monthly subscriptions, and other sums of money the payment whereof is intended to be hereby secured, in addition to the payments other than interest directed or authorized to be made thereout by section 24 of the said Act: AND IT IS HEREBY ALSO DECLARED that if the said premises or any part thereof shall be sold by the said society under the said power in that behalf, there shall be deemed to be due and owing at the time of such sale from the mortgagor to the said society, in addition to the arrears of subscriptions and other moneys then actually due and owing, such a sum of money as under No. — of the present registered rules of the said society, or under any new rule to be substituted for the same, and which may be then in force, would be payable by the mortgagor for redemption, if he had elected to redeem in the half-year in which such sale shall be made, and the same shall be deducted and retained by the said society out of the sale moneys accordingly: [AND IT IS HEREBY ALSO DECLARED, that after any sale made as aforesaid, the mortgagor shall stand possessed of the premises sold for the last day of the term granted therein by the said indenture of lease in trust for the purchaser, and to be

mortgagor to retain possession until default.

Power to society to enter in case of default.

Cases in which powers of sale and of appointing a receiver may be exercised.

In case of a sale what sum shall be deemed to be due.

OF FREEHOLDS OR LEASEHOLDS TO A BUILDING SOCIETY.

assigned and disposed of as he may direct]: AND IT IS HEREBY ALSO DECLARED, that no lease made by the mortgagor of the said premises, or any part thereof, during the continuance of this security, shall have effect by force or virtue of section 18 of the last-mentioned Act, unless the said society shall consent thereto in writing: AND IT IS ALSO DECLARED, that where the context allows, the expression "the mortgagor," in these presents, includes, besides the said A. B., all persons from time to time deriving title under him.

That no lease by mortgagor shall have any effect under Conveyancing Act, 1881, without society's consent.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

ALL THAT, &c. (*parcels*); (*or, if the property is leasehold*, the hereditaments comprised in an indenture of lease, dated, &c. (*date and parties*), and therein described as "All that," &c. (*describe parcels, as in lease*)), which premises were by the said indenture of lease demised unto the said A. B. from the —— day of ——, 18—, for the term of —— years thence next ensuing, at the yearly rent of £——, and subject to the lessee's covenants therein contained.

No. XLIV.

TO TWO MORTGAGEES.

MORTGAGE *to* TWO PERSONS *who* ADVANCE *the* MONEY *in* EQUAL SHARES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £1,000 paid to the said A. B. by the said C. D. and E. F. in equal shares on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D. and E. F., to pay to them in equal shares, on the

Covenant by mortgagor to pay principal and interest.

—— day of —— next, the sum of £1,000, with interest thereon in the meantime, after the rate of £—— per cent. per annum, computed from the date of these presents, AND also so long after that day as any principal money remains due under these presents, to pay to them interest thereon after the same rate by equal half-yearly payments, on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F. in fee simple (*a*): PROVIDED ALWAYS that if the said sum of £1,000, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them. (*Declaration as to leasing power, if desired, supra*, p. 512.)

TO TWO MORTGAGEES.

Mortgagor conveys

to mortgagees, subject to proviso for redemption.

IN WITNESS, &c.

No. XLV.

MORTGAGE *to* FOUR *persons*, TWO *of whom advance part of the money in* UNEQUAL *shares, and the* OTHER TWO *advance the* REMAINDER *on a* JOINT ACCOUNT (*b*).

TO SEVERAL PERSONS IN UNEQUAL SHARES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*one mortgagee*), of the second part, E. F. of, &c. (*another mortgagee*), of the third part, and G. H. of, &c., and I. K. of, &c. (*other mortgagees*), of the fourth part, WITNESSETH, that in

Parties.

(*a*) On the whole it seems more convenient that the legal estate should be vested in the two mortgagees as joint tenants than as tenants in common.

(*b*) Where several persons contribute the money advanced between them, it is generally convenient to take the mortgage in the names of some of them, or their nominees, as joint tenants, with a separate declaration of trust. The above Precedent will, however, be found useful in cases where it is wished to have one deed only.

TO SEVERAL PERSONS IN UNEQUAL SHARES.

consideration of the sum of £100 paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D., &c. (*to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the sum of £200 paid to the said A. B. by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said E. F., &c. (*to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the sum of £150 paid to the said A. B., by the said G. H. and I. K. on or before the execution of these presents, out of moneys belonging to them on a joint account (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said G. H. and I. K., &c. (*to pay principal and interest, supra*, p. 511): AND THIS INDENTURE ALSO WITNESSETH, that for the considerations hereinbefore expressed the said A. B., as beneficial owner, hereby conveys unto the said C. D., E. F., G. H., and I. K., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., E. F., G. H., and I. K., in fee simple: PROVIDED ALWAYS that if the said principal sums of £100, £200, and £150, with interest thereon, respectively, shall be paid on the said —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them: AND IT IS HEREBY DECLARED that during the continuance of this security all persons in whom the hereditaments hereby conveyed shall for the time being be vested, shall hold the same in trust for the persons for the time being entitled to the principal sums of £100, £200, and £150, hereby secured, and the interest thereof respectively, *pari passu*, and without any preference or priority. (*Declaration as to leasing power if desired, supra*, p. 512.)

Covenant by mortgagor with one mortgagee to pay money advanced by him.

Similar covenant with another.

Similar covenant with joint mortgagees.

Conveyance by mortgagor to all the mortgagees, subject to proviso for redemption.

Declaration that mortgagees shall be entitled *pari passu*.

IN WITNESS, &c.

No. XLVI.

DECLARATION *of* TRUST *of* MONEY SECURED *on* MORTGAGE, *and* CONTRIBUTED *by* DIFFERENT LENDERS *in* UNEQUAL PROPORTIONS, *the* MORTGAGE *having been taken in the* NAMES *of* FOUR TRUSTEES NOMINATED *by the* LENDERS (*a*).

DECLARATION OF TRUST ON CONTRIBUTORY MORTGAGE.

TO ALL TO WHOM THESE PRESENTS shall come, A. B. of, &c., C. D. of, &c., E. F. of, &c., and G. H. of, &c., send greeting: WHEREAS by an indenture bearing even date with, but executed before these presents, and made between X. Y. of, &c., of the one part, and the said A. B., C. D., E. F., and G. H., of the other part, in consideration of the sum of £5,000 therein expressed to be paid to the said X. Y. by the said A. B., C. D., E. F., and G. H., out of moneys belonging to them on a joint account divers messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, therein more particularly described, have been conveyed unto and to the use of the said A. B., C. D., E. F., and G. H., in fee simple, by way of mortgage for securing the payment by the said X. Y., unto the said A. B., C. D., E. F., and G. H., of the sum of £5,000, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— next, and in the said indenture is contained a covenant by the said X. Y. for the payment of the said principal sum of £5,000, and the interest thereof: AND WHEREAS the sum of £5,000 in the hereinbefore recited indenture expressed to be paid to the said X. Y. by the said A. B., C. D., E. F., and G. H. as aforesaid, was in fact money contributed by the several persons and in the shares and amounts next hereinafter mentioned (that is to say), the sum of £1,000 (part thereof) by I. K. of, &c., the sum of £1,500 (other part thereof) by L. M. and N. O., as the trustees of an indenture of settlement, dated the —— day of ——, and made upon the marriage of —— with ——, the sum of £2,000 (other part thereof) by P. Q. and R. S., the executors and trustees named

Recite mortgage of even date for £5,000.

That £5,000 was contributed by several persons in different shares.

(*a*) The mortgage in this case is supposed to have been in the form of Precedent No. IV.

DECLARATION OF TRUST ON CONTRIBUTORY MORTGAGE.

in the will of ——, dated the —— day of ——, and the sum of £500 (residue thereof), by T. V., the wife of U. V. of, &c., being money belonging to her for her separate use: AND WHEREAS the said A. B., C. D., E. F., and G. H. have agreed at the request of the several persons by whom the said sum of £5,000 was contributed as aforesaid, to execute such declaration of trust as is hereinafter contained: NOW THESE PRESENTS WITNESS, that in consideration of the premises, it is hereby declared that the said A. B., C. D., E. F., and G. H., shall stand and be possessed of and interested in the said sum of £5,000 secured by the hereinbefore recited indenture, and the interest thereof, upon the trusts following (that is to say), As TO the sum of £1,000 (part of the said principal sum) and the interest of the said sum of £1,000, in trust for the said I. K. absolutely, As TO the sum of £1,500 (other part of the said principal sum) and the interest of the said sum of £1,500, in trust for the said L. M. and N. O., as the trustees of the said indenture of settlement of the —— day of ——, As TO the sum of £2,000 (other part of the said principal sum) and the interest of the said sum of £2,000, in trust for the said P. Q. and R. S., as the trustees of the said will of the said ——, AND AS to the sum of £500 (residue of the said principal sum) and the interest of the said sum of £500, in trust for the said T. V., for her separate use, and so that the said I. K., and L. M. and N. O., and P. Q. and R. S., and T. V., respectively, shall be entitled to their several and respective shares in the said principal sum and interest *pari passu*, and without preference or priority: AND IT IS HEREBY FURTHER DECLARED that the said A. B., C. D., E. F., and G. H. shall stand and be seised and possessed of and interested in the hereditaments and premises conveyed by the hereinbefore recited indenture (subject to the right of redemption subsisting therein), and all other the securities for the said principal sum of £5,000, and the interest thereof, IN TRUST for the said I. K., the said L. M. and N. O., the said P. Q. and R. S., and the said T. V., according to their several shares and interests in the said principal sum of £5,000 and the interest thereof.

Agreement by trustees to execute declaration of trust.

Witnessing part.

Declaration by trustees that they will stand possessed of said £5,000.

As to part for I. K.

As to other part for L. M. and N. O.

As to other part for P. Q. and R. S.

And as to residue for T. V. for her separate use.

No priority between *cestuis que trust*.

Declaration that trustees shall hold securities in trust for lenders according to their shares and interests.

IN WITNESS, &c.

No. XLVII.

DECLARATION *of* TRUST *of* PART *of a sum of* MONEY *secured on a* CONTRIBUTORY MORTGAGE.

OF PART OF A SUM SECURED ON CONTRIBUTORY MORTGAGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., C. D. of, &c., E. F. of, &c., and G. H. of, &c., of the one part, and I. K. of, &c., of the other part (*Recite mortgage to A. B., &c., for* £10,000): AND WHEREAS the sum of £2,000 (part of the sum of £10,000 expressed to be paid by the said A. B., C. D., E. F., and G. H., in and by the said indenture) was the proper money of the said I. K.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, IT IS HEREBY DECLARED AND AGREED, that the said A. B., C. D., E. F., and G. H. shall stand possessed of and interested in the sum of £2,000 (part of the said principal sum of £10,000 secured by the hereinbefore recited indenture), and the interest of the said sum of £2,000, in trust for the said I. K., absolutely, and so that as between the said sum of £2,000 and the interest thereof, and the residue of the said sum of £10,000 and the interest thereof, there shall be no preference or priority.

Parties.

Recite mortgage and that part of money belongs to *cestui que trust*.

Witnessing part.

Declaration of trust.

IN WITNESS, &c.

No. XLVIII.

DECLARATION *of* TRUST *of* PART *of a* SUM OF MONEY *secured on a* CONTRIBUTORY MORTGAGE (*a more special form*).

OF PART OF MONEY SECURED ON CONTRIBUTORY MORTGAGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*mortgagees*), (hereinafter called the said mortgagees), of the one part, and I. K. of, &c., and L. M. of, &c. (*one set of contributories being trustees*), of the other part (*Recite mortgage for* £10,000 *containing a provision for reducing rate of interest if punc-*

OF PART OF MONEY SECURED ON CONTRIBUTORY MORTGAGE.

tually paid) : And whereas the sum of £10,000 so expressed to be paid by the said mortgagees was not the proper moneys of the said mortgagees, but was advanced or contributed by several persons or classes of persons in various amounts and to the intent that the same might be invested by the said mortgagees on the security so made to them as aforesaid: And whereas the sum of £2,000, part of the said sum of £10,000, was advanced or contributed by the said I. K. and L. M., as the said mortgagees do hereby admit, and the said mortgagees have agreed to execute such declaration of trust in favour of the said I. K. and L. M., as is hereinafter contained: And whereas the said mortgagees have executed or are about to execute similar declarations of trust in favour of the other persons or classes of persons by whom the remainder of the said sum of £10,000 was advanced or contributed as aforesaid: NOW THIS INDENTURE WITNESSETH, that the said mortgagees do hereby declare and agree to and with the said I. K. and L. M. that they, the said mortgagees, shall stand and be possessed of and interested in the sum of £2,000 (part of the said sum of £10,000 secured as hereinbefore is mentioned), and of and in a proportionate part of the interest of the said sum of £10,000, and (to the extent of the said sum of £2,000 and interest) of and in the mortgages and other securities for the said sum of £10,000, and the interest thereof, Upon trust for the said I. K. and L. M., as joint tenants, but *pari passu* with and without any preference or priority to or over the several contributories of the sum of £8,000, the residue of the said sum of £10,000, in respect of their several parts or proportions of the said residue, or of the interest thereof: Provided always that the said mortgagees, their executors, administrators, or assigns, shall not be answerable or accountable to the said I. K. and L. M., their executors, administrators, or assigns, for any defect or insufficiency of the said securities, or for omitting or neglecting until required so to do by the said I. K. and L. M., their executors, administrators, or assigns, to call in or require payment of the said sum of £10,000, or any part thereof, or to enforce the securities for the same, or any of them, notwithstanding the time for the payment thereof shall have arrived or have passed, nor for accepting interest on the said sum of £10,000 at the said reduced rate of £4 per cent. per annum, notwithstanding such

Recite that mortgage money was contributed by various persons.

That part was contributed by persons named.

That mortgagees have given similar declarations to other contributories.

Declaration by mortgagees that they will hold part of the mortgage debt in trust for above-named persons.

Proviso for indemnity of mortgagees.

interest may not be paid at or within the time for that purpose appointed by the said indenture of mortgage: PROVIDED ALSO that the said mortgagees, their executors, administrators, or assigns, shall be at liberty at any time and from time to time during the continuance of the said security, if they shall think fit and shall be so advised by counsel, and without any further consent on the part of the said I. K. and L. M., their executors, administrators, or assigns, to concur with the said —— (*the mortgagor*), or with other the person or persons for the time being competent in that behalf, in the exercise of all or any of the powers of enfranchising, making partition, sale, exchange, leasing, and other powers contained in or referred to by indentures, dated, &c., by which indentures the manor and other hereditaments charged with the said sum of £10,000, and commonly called "The C. Estate," were resettled subject to the same debt or to some part thereof, upon such terms as the said mortgagees, their executors, administrators, or assigns, shall deem reasonable and expedient, and to release from the said debt of £10,000, or any part thereof, any part of the hereditaments for the time being charged therewith, or with any part thereof, on being satisfied that the other or remaining part of the said hereditaments for the time being charged therewith are of themselves a sufficient security for the same, or on other hereditaments being substituted for the released hereditaments, or some of them.

OF PART OF MONEY SECURED ON CONTRIBUTORY MORTGAGE.

Power for mortgagees to consent to exercise of powers conferred on mortgagor by settlement,

and to release part of mortgaged property.

IN WITNESS, &c.

No. XLIX.

MORTGAGE *of* LANDS *under the* TRUSTS *of a* TERM *for* SECURING *younger* CHILDREN'S PORTIONS, *where neither the* PORTIONISTS *nor the* FREEHOLDER CONCUR (*a*).

MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees of term for securing*

Parties.

(*a*) On a mortgage of lands under the trusts of a term to raise portions for younger children, it is desirable, as a general rule, to make the portionists parties; but if the trusts are in the general form, their concurrence

MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS.

portions), of the one part, and E. F. of, &c. (*mortgagee*), of the other part: WHEREAS (*Recite settlement whereby certain hereditaments were conveyed to use of husband for life, remainder to uses to secure jointure for wife, remainder to the said A. B. and C. D. for* 1,000 *years, and subject thereto to use of the sons successively in tail,—trusts of term of* 1,000 *years for A. B. and C. D. to raise by mortgage thereof* £4,000 *for younger children's portions*): AND WHEREAS the said (*husband*) died on the —— day of —— without having exercised the power of appointment given to him by the said indenture of settlement as aforesaid in respect of the said sum of £4,000: AND WHEREAS there are four younger children of the said marriage, and each of them has attained the age of twenty-one years, so that the said sum of £4,000 is now payable to and divisible between such younger children equally: AND WHEREAS no part of the said sum of £4,000 has yet been raised: AND WHEREAS the said A. B. and C. D., pursuant to the trust for this purpose contained in the said recited indenture, have applied to the said E. F. to advance to them the sum of £4,000 for the purpose of satisfying the said portions which he the said E. F. has agreed to do upon having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £4,000 paid by the said E. F. to the said A. B. and C. D. for the purpose aforesaid, on or before the execution of these presents (*the receipt, &c.*), they the said A. B. and C. D., as trustees, in execution of the trust for this purpose reposed in them by the said indenture, hereby assign unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto the said E. F., for all the residue now unexpired of the said term of 1,000 years, created by the said indenture: PROVIDED ALWAYS, that if the person or persons for the time being entitled to the premises hereby assigned in remainder immediately expectant on the said term of 1,000 years shall on the —— day of —— next, pay to the said E. F. the

Death of husband without having executed power.

That there are four younger children who have attained vested interests in their portions.

Agreement to mortgage to raise same.

Witnessing part.

Trustees assign parcels

to mortgagee for residue of term.

Subject to proviso for redemption.

is not absolutely essential, and therefore, where it cannot coveniently be obtained, it may be and often is dispensed with.

Where the tenant of the freehold is *sui juris*, he generally consents to join in the mortgage, and to covenant either for payment of the principal and interest, or of the interest only, by way of collateral security; but if he is a minor, or refuses to join, the mortgagee must remain satisfied with the security of the land.

sum of £4,000, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the assignment hereby made shall be void. MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS.

In witness, &c.

No. L.

MORTGAGE *by* Trustees *of a* Term *for* raising Portions *with the* Concurrence *of the* Portionists, *and also of the* Tenant for Life, *under a re-settlement of the estates, who* Covenants *to* keep down *the interest.* TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, ETC.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (*trustees of term*), of the first part, E. F. of, &c. (*tenant for life*), of the second part, G. H. of, &c., I. K. of, &c., and L. M. of, &c. (*portionists*), of the third part, and N. O. of, &c. (*mortgagee*), of the fourth part (*recite settlement on marriage of X. Y. with Z. whereby estates were limited to use of X. Y. for life, with remainder that Z. should receive a jointure, with usual powers, with remainder to A. B. and C. D. for* 1,000 *years, upon trust to raise* £10,000 *as portions for younger children, and also the costs attending the raising of the same, with remainder to use of first and other sons of X. Y. and Z. in tail male—that there were issue of said marriage E. F., the eldest son, and G. H., I. K., and L. M., younger children—that E. F. attained twenty-one, and re-settlement of estates, whereby E. F.'s estate tail is cut down to an estate for life, with remainders over :— death of X. Y.—that G. H., I. K., and L. M. attained twenty-one in lifetime of X. Y.*) : And whereas, the said G. H., I. K., and L. M., having required the said A. B. and C. D. to raise and pay to them the sum of £10,000 by the said indenture of the —— day of —— directed to be raised for the portions of younger children as aforesaid, the said A. B. and C. D. have applied to the said N. O. to advance the said sum of £10,000 for the purpose aforesaid, and also the further sum of £—— for the

Parties. Recitals. Agreement for loan.

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, ETC.

purpose of paying the costs and expenses of and incidental to the raising of the said portions, which the said N. O. has agreed to do, upon having the repayment of the said several sums of £10,000 and £——, making together the sum of £——, with interest for the same, secured by an assignment, by way of mortgage, of the hereditaments comprised in the said term of 1,000 years, and upon having the interest thereon further secured by the covenant of the said E. F. in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH,

Witnessing part.

Consideration.

that in consideration of the sum of £——, paid by the said N. O. to the said A. B. and C. D. for the purposes aforesaid, on or before the execution of these presents, with the consent and approbation of the said G. H., I. K., and L. M. (*the receipt, &c.*),

Trustees of term assign and tenant for life confirms to mortgagee for residue of term.

they the said A. B. and C. D., as trustees, in execution of the trust for this purpose reposed in them by the said indenture of settlement as aforesaid, hereby assign, and the said E. F. as beneficial owner, hereby confirms unto the said N. O., ALL, &c. (*parcels*): TO HOLD the same unto the said N. O. for all the residue now unexpired of the said term of 1,000 years created by the said indenture, without impeachment of waste, subject to the annual sum or yearly rent-charge of £——, by the said indenture limited to the said Z. during her life as aforesaid, and

Proviso for redemption.

the powers and remedies for enforcing payment thereof: PROVIDED ALWAYS that if the said E. F., or other the person or persons for the time being entitled to the hereditaments and premises hereby assigned in remainder immediately expectant on the said term, shall on the —— day of —— next, pay to the said N. O. the sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the assignment hereby

Covenant by tenant for life to keep down the interest.

made shall be void: AND THE SAID E. F. hereby covenants with the said N. O., that he the said E. F. will during his life pay the interest to accrue due on the said principal sum of £——, or on so much thereof as shall for the time being remain owing on the security of these presents, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year.

IN WITNESS, &c.

No. LI.

MORTGAGE *by* TRUSTEES *of a* TERM, *with the concurrence of the* TENANT FOR LIFE, *for the purpose of* RAISING *a* PART *of the* EXPECTANT PORTION *of a* YOUNGER SON, *for his* ADVANCEMENT.

TO RAISE PART OF PORTION UNDER POWER OF ADVANCEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees of the term*), of the first part, E. F. of, &c. (*tenant for life*), of the second part, and G. H. of, &c. (*mortgagee*), of the third part: WHEREAS by an indenture, &c., the manor and other hereditaments therein particularly described (of which the hereditaments described in the schedule hereto form part) were limited and assured from and after the solemnization of the said then intended marriage, To the use of the said E. F. and his assigns during his life, without impeachment of waste, with remainder (subject to a yearly rent-charge limited to the said —— which has determined by her death) to the use of the said A. B. and C. D., their executors, administrators, and assigns, for the term of 1,000 years, computed from the day of the decease of the said E. F., without impeachment of waste, upon trust that if, &c. (*trusts for raising portions for younger children after the decease of E. F., or during his life with his consent in writing, and power to trustees with consent of E. F. to raise a moiety of the expectant portion of any child for his advancement*): AND WHEREAS the said ——, the wife of the said E. F., died on the —— day of ——: AND WHEREAS there are issue of the said E. F. by the said ——, his late wife, L. F., their eldest son, and three younger sons, and two daughters, all of whom are under the age of twenty-one years: AND WHEREAS M. F. is one of such younger sons, and he is now of the age of eighteen years, or thereabouts: AND WHEREAS the said A. B. and C. D., with the consent of the said E. F., are desirous of raising the sum of £—— for the advancement and benefit of the said M. F. under the aforesaid power in that behalf, and they have requested the said G. H. to lend the same which he has agreed to do upon having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, paid by the said G. H. to the

Parties.

Recite settlement.

Death of settlor's wife.

Issue of marriage.

That tenant for life is desirous to raise money for advancement of younger son.

Agreement for loan.

Witnessing part.

Consideration.

TO RAISE PART OF PORTION UNDER POWER OF ADVANCEMENT.

said A. B. and C. D. on or before the execution of these presents, with the consent of the said E. F., and which sum of £—— is intended to be applied by the said A. B. and C. D. for the advancement of the said M. F. under the aforesaid power in that behalf (*the receipt, &c.*), they the said A. B. and C. D. as trustees do

Trustees demise

hereby demise unto the said G. H. THE hereditaments described in the schedule hereto: TO HOLD the same unto the said G. H.

to mortgagee for 1,000 years, wanting ten days.

for the said term of 1,000 years computed from the day of the decease of the said E. F., so as aforesaid created by the said indenture (except the last ten days of the said term), without impeachment of waste: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said E. F., as beneficial owner, doth hereby demise unto the said G. H., THE hereditaments described in the schedule hereto: To HOLD the same unto the said G. H., for the term of ninety-nine years, computed from the day of the date of these presents, if the said E. F. shall so long live, without impeachment of waste:

Second witnessing part.

Tenant for life demises

to mortgagee for 99 years, if he should so long live.

Proviso for redemption.

PROVIDED ALWAYS, that if the said E. F., or other the person or persons for the time being entitled to the hereditaments hereby demised, in remainder expectant on the said term of 1,000 years, shall, on the —— day of —— next, pay to the said G. H. the sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case these presents and the several demises hereby made shall cease, and be void (*Covenant by E. F. to pay principal and interest, supra*, p. 506); PROVIDED ALWAYS, and it is hereby declared, that as between the said E. F. on the one hand, and the hereditaments hereby demised on the other hand, the said E. F., and his estate and effects, shall be liable during his life to keep down the interest on the said principal sum of £——, in exoneration of the said hereditaments, and the said hereditaments shall be charged with, and liable to, the payment of the said principal sum of £——, in exoneration of the said E. F. and his estate and effects: but this present proviso shall not in anywise affect the said G. H., or his right to resort to his several securities in such order and manner as he shall think fit.

Covenant by tenant for life to pay principal and interest.

Declaration as to order of liability.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LII.

MORTGAGE *by* ASSIGNMENT *of* PREMISES *comprised in a* BUILDING LEASE *to secure the repayment of* SUMS *advanced and to be advanced to the* LESSEE *for the purpose of enabling him to complete* SEVERAL HOUSES *which are unfinished.*

MORTGAGE BY A BUILDER OF UNFINISHED HOUSES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite building lease to A. B.*): AND WHEREAS pursuant to the covenant for this purpose contained in the said indenture of lease, the said A. B. hath already laid out and expended the sum of £—— in erecting buildings on the said piece or parcel of ground in the said indenture comprised: AND WHEREAS the said A. B., having occasion for the sum of £—— for the purpose of enabling him to complete the erections and buildings intended to be erected on the said piece or parcel of ground pursuant to the aforesaid covenant, hath applied to and requested the said C. D. to lend him the same, which he the said C. D. hath agreed to do in two separate sums, that is to say, the sum of £—— immediately before the execution of these presents, and the sum of £—— when and so soon as all the buildings erected or to be erected, pursuant to the aforesaid covenant of the said A. B. in that behalf, shall have been covered in, on having the said several sums of £—— and £—— with interest thereon respectively secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and in consideration of the covenant hereinafter contained on the part of the said C. D., the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next, the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO to repay to him the money which shall be hereafter advanced by him to the said A. B. pursuant to the covenant in

Parties.

Recite sum already expended by mortgagor in building.

Agreement by mortgagee to lend mortgagor money to complete buildings.

Covenant by mortgagor to repay sum now advanced, and further sum when advanced,

MORTGAGE BY A BUILDER OF UNFINISHED HOUSES.

that behalf hereinafter contained on the —— day of ——, or the —— day of ——, which shall first happen after the date of the said advance, with interest thereon after the rate aforesaid, computed from the date of the said advance: AND ALSO if and so long as any principal money shall remain unpaid after the day hereby appointed for payment thereof, to pay interest thereon after the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of ——; AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. ALL AND SINGULAR the piece or parcel of ground, hereditaments, and premises comprised in and demised by the said indenture of lease, and all buildings erected thereon: TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of ninety-nine years created by the said indenture of lease: PROVIDED ALWAYS, that if the principal sums hereinbefore covenanted to be paid shall be paid at the times hereinbefore appointed for payment thereof, then and in such case the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be re-assigned to him or them; AND THE SAID A. B. hereby covenants with the said C. D., that he the said A. B. will, before the —— day of ——, complete the buildings hereby assigned, and all other the buildings which ought to be erected on the said piece of ground pursuant to his covenant in that behalf contained in the said indenture of lease, and that in case he shall neglect so to do, then it shall be lawful for the said C. D., his executors, administrators, or assigns, to enter upon and into the said premises hereby assigned, and to complete the buildings, and that all sums of money which he or they shall expend thereon, with interest thereon after the rate aforesaid from the time or respective times of expending the same, shall be repaid to him or them on demand by the said A. B., and shall in the meantime be charged on the premises hereby assigned, in addition to the other moneys hereby secured (*Covenant by A. B. to insure against fire, supra*, p. 507): AND THE SAID C. D. hereby covenants with the said A. B. that when and so soon as all the buildings erected and to be erected as aforesaid shall be covered in, and if up to that time all the covenants hereinbefore contained on the part of the said A. B. (other than the covenant

and to pay interest half-yearly.

Assignment of premises

to mortgagee for residue of term.

Proviso for redemption.

Covenant by mortgagor to complete buildings,

and that if default is made by him, mortgagee may finish them.

Premises in such case to be a security for moneys expended by mortgagee, as well as other moneys.

Covenant by mortgagee to advance further sum on buildings being covered in.

for payment of the said principal sum of £—— on the —— day of —— next) shall have been duly kept and performed, he the said C. D. will advance to the said A. B. the further sum of £——, at interest after the rate aforesaid, on the security of these presents. (*Declaration as to leasing power if desired, supra*, p. 507.)

MORTGAGE BY A BUILDER OF UNFINISHED HOUSES.

IN WITNESS, &c.

No. LIII.

MORTGAGE *by a* BUILDER *of* LAND *comprised in an* AGREEMENT *entitling him to* SEPARATE LEASES *from the* FREEHOLDER *as the houses are completed, to secure* ADVANCES *to be made for the purpose of enabling him to complete the houses.*

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS (*Recite agreement between freeholder and builder whereby builder agrees to build houses on a plot of land and freeholder agrees to grant a separate lease of each house when completed*): AND WHEREAS the said C. D. has agreed to make advances of money to the said A. B. from time to time in order to enable him to complete the houses and buildings on the said plot of land pursuant to the said agreement, upon having the repayment thereof with interest secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, as follows:—

Parties.

Agreement for loan.

1. THE said C. D. (hereinafter called "the mortgagee") hereby covenants with the said A. B. (hereinafter called "the mortgagor"), that he the mortgagee will advance and lend to the mortgagor such sums of money as are next hereinafter mentioned (that is to say) the sum of £—— immediately on the execution of these presents, and for and in respect of each house built by the mortgagor on the plot of land pursuant to the said

Mortgagee covenants to make advances as each house is covered in and completed.

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

agreement, the further sum of £——, one moiety thereof to be advanced and lent as and when each such house shall be covered in, and the other moiety thereof as and when the same house shall be completed, so as to be fit for habitation: PROVIDED ALWAYS that the mortgagee shall not be bound to make any such advance as aforesaid, unless and until his surveyor shall have certified in writing that the house in respect of which the advance is to be made has been covered in or completed (as the case may be) to the satisfaction of such surveyor and in conformity with the said agreement, and the fee of the surveyor for inspecting the house and certifying as aforesaid (not exceeding in amount £——) shall be paid by the mortgagor: PROVIDED ALSO that the mortgagee shall not be bound to make any such advance as aforesaid, unless up to the time when such advance ought to be made under the foregoing covenant the mortgagor shall have duly paid the interest on the principal money for the time being owing on this security on the half-yearly days hereinafter appointed for payment of such interest, or within fourteen days thereafter, and shall have duly observed all the covenants hereinafter, on the mortgagor's part, contained (other than the covenant contained in Article 2).

Proviso that mortgagee need not make advance until surveyor has certified that house has been properly built, &c.,

nor unless mortgagor has paid interest punctually and observed his covenants.

Mortgagor covenants to repay advances

2. IN consideration of the advances to be made as aforesaid the mortgagor hereby covenants with the mortgagee that he the mortgagor will repay to the mortgagee every sum of money advanced by him pursuant to Article 1 on the —— day of —— or the —— day of ——, which shall first happen after the date of the said advance, with interest thereon computed from the date of such advance, after the rate of £—— per cent. per annum; and if the same shall not be repaid at the time aforesaid will thenceforth pay to the mortgagee interest thereon after the rate aforesaid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, until the said principal sum shall be fully repaid.

and to pay interest half-yearly.

Mortgagor assigns plot of land to mortgagee, subject to proviso for redemption on payment of principal money and interest.

3. THE mortgagor, as beneficial owner, hereby assigns unto the mortgagee THE plot of ground comprised in the said agreement, and the benefit of the said agreement in relation thereto, TO HOLD the same unto the mortgagee: PROVIDED ALWAYS that the mortgagor shall, at his own expense have a reassignment of the said premises, if he shall pay all moneys advanced to him by the mortgagee with interest thereon pursuant to Article 2.

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

Covenant by mortgagor to insure against fire, and deliver receipts for premiums to mortgagee.

Power to mortgagee to insure in case of mortgagor's default, and to add expense of so doing to the mortgage debt.

4. The mortgagor hereby covenants with the mortgagee that he the mortgagor will keep insured the buildings for the time being on the said plot of land in a sum equal to two-thirds of the value thereof: And will deliver to the mortgagee the receipt for every premium payable in respect of such insurance within seven days after it shall become due: And if the mortgagor shall fail to keep the said buildings insured as aforesaid, then the mortgagee may insure the same in such sum as he may think fit, and all moneys expended by him in or about such insurance, with interest thereon after the rate aforesaid, computed from the time of expending the same, shall be repaid to the mortgagee by the mortgagor on demand, and shall in the meantime be a charge on the said premises in addition to the other moneys hereby secured: And all moneys received in respect of any such insurance shall be applied in rebuilding or reinstating the premises in respect whereof the same shall be received.

Mortgagor covenants to build according to agreement, and to observe agreement.

5. The mortgagor hereby further covenants with the mortgagee that he the mortgagor will erect and complete the —— houses by the said agreement agreed to be built by him on the said plot of ground at the times and in the manner mentioned in that behalf in the said agreement, and will pay the rent made payable by the said agreement, and observe and perform the said agreement in all respects.

Power to mortgagee in certain cases to enter and complete buildings,

6. If the mortgagor shall make default in the repayment of any principal money hereby secured for the space of one calendar month after payment thereof shall have been demanded, or shall make default in any half-yearly payment of interest payable under these presents, or any part thereof, for the space of fourteen days after the day hereby appointed for such payment, or shall commit any breach of any of the covenants herein on his part contained (other than the covenant contained in Article 2), or shall become bankrupt or die during the continuance of this security, then and in any of such cases the mortgagee may at any time thereafter enter into and upon and take possession of the plot of land hereby assigned, and complete any houses or buildings thereon which may be unfinished in such manner as he may think fit, and add the money expended in so doing with interest thereon after the rate aforesaid, computed from the time of expending the same, to the other principal moneys and interest hereby secured,

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

and to sell.

so as to be an additional charge on the said premises: And the mortgagee may also sell the said plot of ground and the houses and buildings thereon, or any part thereof, either together or in lots, and so that every such sale may be either by public auction or private contract, and the mortgagee may buy in at sales by auction and rescind contracts for sale and resell without being answerable for any loss arising thereby, and may execute assurances, give valid receipts for the purchase-money, and do all other acts and things which he may think fit for carrying into effect and completing any such sale: And the mortgagee shall, with and out of the moneys to arise from any such sale, in the first place pay the costs and expenses incurred in or about such sale or otherwise in relation to this security, and in the next place pay the moneys then owing on this security, and pay the surplus (if any) to the mortgagor.

Purchaser not bound to inquire whether any case authorizing a sale has happened.

7. No purchaser upon any such sale as aforesaid shall be bound or concerned to see whether any of the cases have happened in which such sale is hereby authorized to be made or otherwise as to the propriety of such sale, or be affected by notice that no such case has happened or that the sale is otherwise improper.

How demand may be made.

8. Any demand for payment of the money hereby secured may be made by a notice in writing given to the mortgagor or to one of his executors or administrators, or left at his usual or last known place of abode or business, or left upon or affixed to any part of the land comprised in the said agreement, or any building thereon.

Mortgagor covenants to procure leases from freeholder, and to execute mortgages to mortgagee of premises comprised in leases.

9. The mortgagor hereby further covenants with the mortgagee that he the mortgagor will, at his own expense, procure from the said —— (*the freeholder*), a separate lease of each of the said houses when and so soon as such lease can be required in accordance with the said recited agreement, and will procure such lease to be granted either to the mortgagor or to the mortgagee as the mortgagee may determine, and in case such lease shall be granted to the mortgagor then will forthwith make and execute to the mortgagee a valid and effectual mortgage of the premises comprised in such lease, either by way of assignment or underlease, for the purpose of securing the money which shall then be owing to the mortgagee upon this security, or such part of the said money as the mortgagee may think fit to

allocate to the premises comprised in that particular lease, with interest thereon after the rate aforesaid: And every such mortgage shall contain such powers and provisions as the mortgagee shall reasonably require. BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

10. THE expressions "the mortgagor" and "the mortgagee" used in these presents include (besides the said A. B. and C. D.) all persons deriving title under them respectively, except where the context may require a different construction. (*Declaration as to leasing power if desired, supra*, p. 518.) Operation of words "mortgagor" and "mortgagee."

IN WITNESS, &c.

No. LIV.

APPOINTMENT *under the* STATUTORY POWER *of a* RECEIVER *of the* RENT *of* FREEHOLD *and* LEASEHOLD PROPERTY *comprised in a* MORTGAGE. APPOINTMENT OF RECEIVER.

WHEREAS by an indenture dated, &c., and made between X. Y. of, &c., of the one part, and me, the undersigned A. B., of the other part, certain freehold and leasehold messuages, lands, and hereditaments, situate in the parish of —— in the county of ——, therein particularly described, were conveyed and demised by the said X. Y. to me, in fee simple as to the said freeholds, and as to the said leaseholds for the unexpired residue of the term of —— years subsisting therein, except the last day thereof, by way of mortgage, for securing payment of the sum of £—— on the —— day of —— then next, with interest thereon after the rate of £—— per cent. per annum: AND WHEREAS the principal money secured by the said indenture remains owing, and the interest thereon has been in arrear for more than two months; NOW I, the undersigned A. B., in pursuance of the power for this purpose given to me by section 24 of the Conveyancing and Law of Property Act, 1881, and of all other powers (if any) me hereunto enabling, do hereby appoint C. D. of, &c. to be the receiver of the rents and income of all the freehold and leasehold property comprised in the said mortgage, Recital of mortgage. That principal money is due and interest in arrear. Appointment of receiver.

APPOINTMENT OF RECEIVER.

with all the powers conferred on a receiver by the said Act, and to the intent that he shall apply all moneys received by him in the manner directed by sub-section 8 of section 24 of the said Act, and I authorize the said C. D. to retain for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission of —— per cent. on the gross amount of all money received by him, and I direct him to keep the buildings on the said premises insured against loss or damage by fire in the —— Insurance Office.

Authority to retain commission,

and to insure buildings against fire.

As WITNESS my hand this —— day of —— 18—.

(Signed) A. B.

No. LV.

WITH EXTENSION OF STATUTORY POWER TO GRANT MINING LEASES.

MORTGAGE *with* PROVISION *extending* STATUTORY POWER *of* LEASING *to* MINING LEASES, *and* PROVISION *that* LEASES *shall be* APPROVED *by* MORTGAGEE'S SOLICITOR.

THIS INDENTURE, &c. (*same as No. I., omitting declaration as to leasing power, adding at the end the following provision*): AND IT IS HEREBY DECLARED that the power of leasing conferred by section 18 of the Conveyancing and Law of Property Act, 1881, shall be extended so that the person or persons in whom that power shall for the time being be vested may grant (in addition to the leases thereby authorized) a mining lease or mining leases of any part of the mortgaged hereditaments for any term not exceeding sixty years, and for this purpose the term "mining lease" shall have the same meaning as is assigned thereto by section 2, sub-section 10 of the Settled Land Act, 1882, and any rent may be reserved on a mining lease under the power hereby conferred, which by virtue of section 9 of the Settled Land Act, 1882, might be reserved on any mining lease under that Act (*a*): AND IT IS ALSO DECLARED that

Declaration that s. 18 of Conveyancing Act shall be extended so as to authorize mining leases.

Power to

(*a*) Sub-sects. 4—8, 11, 12, of sect. 18, of the Conveyancing Act, 1881, will apply to a mining lease. See sub-sect. 14, which provides that "any further powers so reserved or conferred shall be exercisable so far as may be as if they were conferred by this Act, and with all the like incidents, effects, and consequences."

with a view to enable the person or persons aforesaid to grant leases under the statutory power as hereby extended he or they may accept the surrender of any lease now existing, or which hereafter may be granted, of any property proposed to be comprised in the new lease: PROVIDED ALWAYS that no lease shall be granted by the mortgagor under the statutory power as hereby extended unless the same shall have been first perused and approved of by the solicitor or solicitors of the mortgagee at the expense of the mortgagor, and such perusal and approval shall be deemed to be sufficiently testified by a memorandum thereof endorsed on the lease or written at the foot of the draft or any copy of the lease, and signed by a person or firm professing to be the solicitor or solicitors of the mortgagee.

WITH EXTENSION OF STATUTORY POWER TO GRANT MINING LEASES.

accept surrender of existing leases.

All leases under statutory power as extended to be approved by mortgagee's solicitor.

IN WITNESS, &c.

No. LVI.

MORTGAGE *of a* MINING PROPERTY, *with provisions extending the* STATUTORY POWERS *of* LEASING *to* MINING LEASES,—PROVISIONS *for setting apart a* PROPORTION *of the* RENTS *and* ROYALTIES *payable under the* MINING LEASES, *and* INVESTING *same in the* NAMES OF TRUSTEES *to constitute a* SINKING FUND *in aid of the* PRINCIPAL SECURITY.

OF MINING PROPERTY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*mortgagee*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part, WITNESSETH, that, &c. (*Conveyance by A. B. to C. D. in fee,—proviso for redemption—covenant to pay principal and interest, as in Precedent No. I.*, p. 506): AND IT IS DECLARED, that upon any sale made by the said C. D., his executors, administrators, or assigns, under the statutory power in that behalf, the surface of any of the lands hereby conveyed may be sold without the mines thereunder, or the mines under any of the said lands may be sold without the surface of the

Parties.

On sales surface land, and mines thereunder, may be sold separately.

OF MINING PROPERTY.

same lands, and in either of the said cases there may be reserved to the vendor, or granted to the purchaser (as the case may require), such powers, privileges, and easements for the purpose of working the mines so reserved or conveyed, as the case may be, for getting and carrying away the produce thereof, or otherwise in connection with the mines as may be thought desirable or convenient: AND IT IS ALSO DECLARED that in addition to the powers of leasing conferred on the mortgagor and mortgagee by section 18 of the Conveyancing and Law of Property Act, 1881, the person or persons in whom those powers shall for the time being be vested under that Act, shall have power also to lease all or any of the mines, minerals, and substances on or under, or otherwise forming part of the hereditaments hereby conveyed, and either with or without any houses or lands convenient to be held or occupied with the same, and either with or without the surface of any lands under which the same or any part thereof shall lie, and with such powers and privileges of working and getting the said mines and premises, and of stacking, depositing, and carrying away the produce thereof, and of converting such produce into coke, bricks, or other articles or things, and of sinking, driving, erecting, constructing, and using pits, shafts, levels, drifts, airgates, watergates, furnaces, engines, machinery, houses for workmen, and other houses, buildings, sheds, canals, wharves, railways, waggon ways, and other ways, works, devices, and conveniences, and with all such other easements, rights, and privileges to be exercised in, over, upon, or under the hereditaments hereby conveyed or any part thereof, in connection with the mines and premises to be included in such lease as the person or persons for the time being exercising this power shall think fit: BUT so that every lease under this power shall be for a term not exceeding sixty years to take effect in possession, or within one year from the making thereof, and shall be at the best rent or rents, royalty or royalties, that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium for the making thereof, and so also that every such lease shall contain a covenant by the lessee to pay the rents or royalties thereby reserved, and also a condition of re-entry on non-payment thereof, and so also that a counterpart of such lease be executed by the lessee: PROVIDED ALSO, and it is hereby declared, that with a view to enable the person or persons

Power to grant mining leases, with powers ancillary thereto, for sixty years.

Power to mortgagor to accept sur-

aforesaid to grant leases under the said statutory powers and under the power hereinbefore contained, it shall be lawful for him or them, from time to time, to obtain the surrender or assignment of any lease now existing, or which may be hereafter created, either as to the whole or any part of the land comprised in the same lease: PROVIDED ALWAYS, and it is hereby agreed and declared, and in particular the said A. B. hereby covenants with the said C. D. that within one calendar month after the execution by the lessee of the counterpart of every or any lease which may be granted by the mortgagor under the said statutory powers or under the powers hereinbefore contained, every such counterpart shall be delivered to the solicitor or solicitors, or other person or persons who shall from time to time be appointed to take charge of the same by the said C. D., his executors, administrators, or assigns, AND THAT upon the delivery of every such counterpart, the sum of one guinea shall be paid by the said A. B., his heirs or assigns, to the solicitor or solicitors, or other person or persons appointed as aforesaid, as a fee for his or their trouble, in or about the accepting of the said counterparts, and giving such receipt or acknowledgment for the same as next hereinafter is mentioned, and the said solicitor or solicitors, or other person or persons to whom such counterpart shall be delivered as aforesaid, shall upon the request of the person or persons delivering the same, and paying the said fee of one guinea as aforesaid, give to him or them a receipt or acknowledgment in writing of such delivery, which receipt or acknowledgment shall be sufficient evidence of the due delivery of every or any counterpart therein expressed to have been so delivered: AND THE SAID A. B. hereby covenants with the said C. D., and also by way of separate covenant with the said E. F. and G. H. (hereinafter called "the trustees"), THAT whilst and so long as the rent or rents, royalties, tolls, and other payments reserved and made payable by any mining lease which shall have been granted by the said A. B., his heirs or assigns, under the power hereinbefore contained shall be received by the said A. B., his heirs or assigns, he the said A. B., his heirs or assigns, shall and will, immediately upon every receipt of the same rent or rents, royalties, tolls, or other payments respectively, pay one full third part thereof to the trustees, upon the trusts hereinafter declared concerning the same: AND

OF MINING PROPERTY.

renders of leases.

Covenants by mortgagor to deliver counterparts of leases to mortgagee's solicitor,

and pay a fee upon such delivery.

Covenant by mortgagor to pay one-third of rents, &c., received on mining leases to trustees;

and to make and deliver

OF MINING PROPERTY.

statements and accounts of such rents.

IN ORDER to enable the trustees to ascertain from time to time the amount payable to them under the covenant lastly hereinbefore contained, he the said A. B., his heirs or assigns, will at all times make and deliver, or cause to be made and delivered to them, true and correct statements and accounts of the rents, royalties, tolls, and other payments which shall from time to time become payable under the reservation of every or any such lease as aforesaid: AND IT IS HEREBY AGREED AND DECLARED, that the trustees shall, with and out of the moneys paid to them as aforesaid, in the first place pay all the costs and expenses incurred by them, or by the said C. D., his heirs, executors, administrators, and assigns, in or about the obtaining payment and receiving of the said moneys, or otherwise in relation to the premises, and shall invest the residue of the said moneys in the names of the trustees in some or one of the modes of investment authorized by law for trust funds, with power from time to time to vary the said investments into or for others of the same or a like nature, but so that every such variation of investment be made with the consent of the said A. B., his executors, administrators, or assigns, and shall from time to time receive the annual income of the said trust fund, and invest the same, and the resulting income thereof in manner aforesaid, with a like power of varying the investment thereof, so as to accumulate at compound interest: AND in case default shall be made in payment of any principal money or interest hereby secured, at the respective times when the same respectively ought to be paid according to the true intent and meaning of these presents, then and in such case the trustees shall upon the request of the said C. D., his executors, administrators, or assigns (but not otherwise), sell, call in, and convert into money all or any part of the said trust fund, and apply the moneys arising therefrom, in the first place in payment of the costs and expenses attending such sale, calling in, and conversion, or otherwise incurred in relation to the premises, and in the next place in or towards satisfaction and discharge of the principal sum and interest then due and owing upon the security of these presents: AND IT IS HEREBY AGREED AND DECLARED, that subject to the trusts aforesaid, the trustees shall stand possessed of the said trust fund in trust for the said A. B., his executors, administrators, and assigns: AND IT IS

Trustees to stand possessed of moneys paid to them in respect of rents, &c.

Upon trust after paying expenses to invest same and accumulate at compound interest.

hereby declared, that the power of appointing a new trustee in the place of the said E. F., or any trustee appointed in his place, shall be vested in the said A. B., his heirs, or assigns, and the power of appointing a new trustee in the place of the said G. H., or any trustee appointed in his place, shall be vested in the said C. D., his executors, administrators, or assigns: AND IT IS ALSO HEREBY DECLARED, that the said E. F. and G. H., and every future trustee who may be a solicitor, shall be entitled to be paid for all professional business done by them respectively in relation to the said trust funds and premises, in the same manner as if they respectively had not been trustees hereof.

OF MINING PROPERTY.

Trustees to be entitled to charge for professional business.

IN WITNESS, &c.

No. LVII.

CONVEYANCE *of* FREEHOLD LANDS *by way of* COLLATERAL SECURITY (*f*).

OF FREEHOLDS, AS COLLATERAL SECURITY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture bearing even date with these presents, and made between the same parties, in consideration of the sum of £5,000 paid by the said C. D. to the said A. B., the said A. B. has conveyed certain hereditaments situate in the parish of —— in the county of ——, therein particularly described, unto and to the use of the said C. D. in fee simple, by way of mortgage for securing the payment to him of the sum of £5,000, with interest for the same after the rate of £5 per cent. per annum, on the —— day of —— next: AND WHEREAS upon the treaty for the said loan of £5,000, it was agreed that the repayment thereof, with interest,

Parties.

Recite principal mortgage deed, &c.

Agreement for further security.

(*f*) It is sometimes desirable to keep the titles to two estates to be included in the same security distinct by having two separate deeds. The above precedent is adapted to such a case. The *ad valorem* stamp will be imposed on the principal mortgage deed; and this deed of collateral security will require only a stamp of 6*d.* for every £100 of the £5,000 secured.

OF FREEHOLDS, AS COLLATERAL SECURITY.

should be further secured by a mortgage of the hereditaments hereinafter described in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £5,000 so paid by the said C. D. to the said A. B. as aforesaid (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance of parcels to mortgagee in fee, supra*, p. 506.) Subject to the proviso following (namely): PROVIDED ALWAYS, that if the said A. B. shall, on the —— day of —— next, pay to the said C. D. the said sum of £5,000 with interest for the same after the rate aforesaid, computed from the date of these presents, the said premises hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be re-conveyed to him or them. (*Declaration as to leasing power, if desired, supra*, p. 507.)

Witnessing part.

Mortgagor conveys to mortgagee in fee.

Proviso for redemption.

IN WITNESS, &c.

No. LVIII.

OF FREEHOLDS, AS ADDITIONAL SECURITY BY INDORSEMENT.

CONVEYANCE *of* FREEHOLD LANDS *by way of* ADDITIONAL SECURITY—*by* INDORSEMENT *on the* PRINCIPAL MORTGAGE DEED (*g*).

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the within-mentioned sum of £5,000 remains due and owing on the security of the within-written indenture: AND WHEREAS the said A. B. has agreed to convey the hereditaments hereinafter described unto the said C. D., by way of further security for the said principal sum and the interest thereof in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £5,000 so remaining

Parties.

Recite that mortgage money remains due.

Agreement for further security.

Witnessing part.

(*g*) In this case the principal mortgage is supposed to have been made by a deed dated some time previously to the date of the additional security.

owing as aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple, subject to such right or equity of redemption as the hereditaments comprised in the within-written indenture are now subject or liable to under the same indenture, and so that all the powers and provisions contained in the within-written indenture shall extend and be applicable to the hereditaments and premises hereby conveyed, in the same manner as if the said hereditaments and premises had been included in the said indenture. (*Declaration as to leasing power, if desired, supra*, p. 507.)

OF FREEHOLDS, AS ADDITIONAL SECURITY BY INDORSEMENT.

Mortgagor conveys further property to mortgagee, subject to right of redemption.

IN WITNESS, &c.

No. LIX.

ASSIGNMENT *of a* POLICY *of* ASSURANCE *by way of* ADDITIONAL SECURITY.

OF POLICY, AS ADDITIONAL SECURITY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*) of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture (hereinafter called "the principal indenture") dated, &c., and made, &c., certain policies of assurance effected on the life of the said A. B. were assigned by the said A. B. unto the said C. D., by way of mortgage, for securing the payment to the said C. D. of the sum of £3,000, with interest thereon after the rate of £5 per cent. per annum: AND WHEREAS the said sum of £3,000, is still owing on the security of the principal indenture: AND WHEREAS by a policy of assurance, dated, &c., and numbered ——, the said A. B. has effected an assurance in his own name, on his own life, with the —— Society, in the sum of £——, under the annual premium of £——: AND WHEREAS the said A. B. has agreed to assign the said policy of assurance unto the said C. D. by way of further security in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £3,000

Parties.

Recite mortgage of policies.

That money remains due.

That mortgagor has effected a further policy.

Agreement by mortgagor to assign further policy.

Witnessing part.

OF POLICY, AS ADDITIONAL SECURITY.

remaining owing as aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL THAT the hereinbefore recited policy of assurance, and all moneys assured by or to become payable under the same: TO HOLD the same unto the said C. D. subject to the following proviso (namely): PROVIDED ALWAYS, that if the said A. B. shall, on the —— day of —— next, pay to the said C. D. the said sum of £3,000 owing on the security of the principal indenture, and all interest due in respect thereof, then the said policy hereby assigned shall at the request and cost of the said A. B. be reassigned to him: AND THE SAID A. B. hereby covenants with the said C. D. that all the covenants, powers, and provisions contained in the principal indenture shall extend, and be applicable to the policy hereby assigned, as if corresponding covenants, powers, and provisions had been expressly inserted in these presents: AND THAT in the event of any moneys being paid by the said C. D., his executors, administrators, or assigns, in discharge of any premiums or otherwise, on account of the said policy hereby assigned, or on account of any further or renewed policy in the place of the policy hereby assigned, by reason of the default of the said A. B. to pay such moneys, then the said policies and premises comprised in the principal indenture, and any further or renewed policy or policies in the place of the same policies, or any of them, shall, as well as the policy hereby assigned, and any such further or renewed policy in the place thereof as aforesaid, be charged with all such moneys as shall be so paid by the said C. D., his executors, administrators, or assigns, and with the interest thereof.

Mortgagor assigns further policy to mortgagee.

Proviso for redemption.

Covenant by mortgagor that all the covenants, trusts, and powers in original mortgage shall extend to this policy.

IN WITNESS, &c.

No. LX.

OF RAILWAY SHARES.

MORTGAGE *of* SHARES *in a* RAILWAY COMPANY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c.

(*mortgagee*), of the other part (*Recite agreement for loan, supra*, p. 517): AND WHEREAS, with a view to the said intended security, the said A. B. has by a deed (*a*) bearing even date with these presents, transferred unto the said C. D., twenty shares of £50 each, in the capital of the —— Railway Company, which shares are numbered respectively (*state the Nos. of the shares*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. (*Covenant to pay principal and interest, supra*, p. 506): AND IT IS HEREBY AGREED AND DECLARED, that if the said sum of £——, with interest thereon, shall be paid to the said C. D., on the —— day of —— next, according to the foregoing covenant in that behalf, the said railway shares shall, at the request and cost of the said A. B., be re-transferred to him.

IN WITNESS, &c.

OF RAILWAY SHARES.

Recite transfer of railway shares by mortgagor to mortgagee.

Declaration that mortgagee shall hold shares as a security for principal and interest.

No. LXI.

MORTGAGE *of a* LEGACY.

OF A LEGACY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, supra*, p. 506): And THIS INDENTURE ALSO WITNESSETH, that for the

Parties.

(*a*) Under the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), a transfer of railway shares is to be kept by the secretary of the company, and the company is not bound to notice trusts express or implied. (Sects. 14, 15, 20.) It is, therefore, the most convenient plan upon a mortgage of railway shares for the mortgagor to make an absolute transfer of them to the mortgagee for a nominal consideration, according to the form in the schedule to the Act, accompanied by a deed explaining the object of the transfer as above. It will be borne in mind that this species of mortgage gives to the mortgagee an absolute control over and power of dealing with the shares as they stand in his name only, and he will be the person to receive the dividends, but he may, by power of attorney or letter of direction, authorize the mortgagor to receive them. The power of sale conferred by the Conveyancing and Law of Property Act, 1881, is applicable to this species of property.

Transfer of railway shares.

OF A LEGACY.

consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE legacy of £—— bequeathed to the said A. B., by the will of X. Y., late of, &c., which will is dated the —— day of ——, and was proved in the principal Probate Registry of the High Court of Justice on the —— day of ——, by L. M. and N. O., the executors thereof, and which legacy remains unpaid: To HOLD the same unto the said C. D.: UPON TRUST to receive the said legacy, and out of the same to pay in the first place the expenses attending the obtaining payment thereof, and in the next place to pay and retain the said sum of £——, and the interest thereof, or so much thereof (if any) as shall then remain due, and to pay the surplus (if any) of the said legacy to the said A. B.

Mortgagor assigns legacy to mortgagee,

upon trust to apply same in payment of principal, interest, and costs, and to pay surplus to mortgagor.

IN WITNESS, &c.

No. LXII.

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

MORTGAGE *by* TENANT *for* LIFE, *under section* 18 *of the* SETTLED LAND ACT, 1882, *to* RAISE *money for the* ENFRANCHISEMENT *of* COPYHOLDS, *or for* EQUALITY *of* EXCHANGE *or* PARTITION (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, E. F. of, &c., and G. H. of, &c. (*trustees of the settlement*), of the second part, and C. D. of, &c. (*mortgagee*), of the third part: WHEREAS by an indenture dated, &c., and made, &c., divers

(*a*) In this precedent it is supposed that the property mortgaged is not the same as is the subject of the enfranchisement, exchange, or partition.

The mortgagee is not bound or concerned to see that the money advanced by him is actually wanted for the purpose for which it is expressed to be raised. (Sect. 40.)

Power to raise money for costs.

Sect. 18 does not in terms authorize the raising of money for costs in addition to the money payable for the enfranchisement, &c. But it is apprehended that such a power is implied. (See Armstrong *v.* Armstrong, L. R. 18 Eq. 541.) At all events the costs may be paid by the trustees out of any capital money in their hands. (Sect. 21 (*x*).)

freehold and copyhold messuages, lands, and hereditaments situate in, &c., were settled so and in such manner that the said A. B. is beneficially entitled to the possession thereof for his life: AND WHEREAS the said E. F. and G. H. are the trustees of the settlement made by the said indenture for the purposes of the Settled Land Acts, 1882 to 1890: AND WHEREAS, under the power in that behalf contained in the Settled Land Act, 1882, the said A. B. has agreed with I. K., the lord of the manor of ——, for the enfranchisement of certain copyhold tenements held of that manor and being part of the hereditaments settled by the said indenture [*or* has agreed to exchange part of the hereditaments settled by the said indenture for other hereditaments belonging to X. Y., *or* has agreed to concur in making a partition of the hereditaments, one undivided moiety whereof is settled by the said indenture], and the sum of £—— is required for such enfranchisement [*or* for equality of exchange *or* partition]: AND WHEREAS the said A. B. has requested the said C. D. to lend the sum of £—— required as aforesaid upon mortgage of the hereditaments hereinafter described, being part of the hereditaments settled by the said indenture, which he has agreed to do: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— on or before the execution of these presents paid by the said C. D., at the request of the said A. B., to the said E. F. and G. H. as the trustees of the said settlement for the purpose aforesaid (the receipt whereof the said E. F. and G. H. hereby acknowledge) the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner (*b*), hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple: PROVIDED ALWAYS that if the said A. B. or any other person interested in the said hereditaments under the said indenture of settlement, shall on the —— day of —— next pay to the said C. D. the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the day of these presents, then

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

Recital of settlement.

Agreement by tenant for life for enfranchisement, exchange, or partition.

Agreement for loan.

Witnessing part.

Tenant for life conveys to mortgagee.

Proviso for redemption.

(*b*) It is apprehended that the tenant for life, if he chooses to exercise the power of mortgaging, must submit to be bound by the absolute covenants implied by law on the part of a mortgagor.

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

and in such case (*c*) the hereditaments hereby conveyed shall be re-conveyed to the uses subsisting therein under the said indenture of settlement, such reconveyance to be at the cost of the person or persons requiring the same: AND IT IS HEREBY DECLARED that if the said principal sum of £—— shall not be paid on the said —— day of —— next, interest shall thenceforth be paid thereon after the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: AND the said A. B. hereby covenants with the said C. D. that he, the said A. B., will during his life pay the interest to accrue on the said principal sum as and when the same shall become due and payable: AND the said A. B. hereby acknowledges the right of the said C. D. to production of the said indenture of settlement [and also of the documents mentioned in the schedule hereto] and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

Interest to be paid half-yearly.

Covenant by tenant for life to keep down interest.

Acknowledgment of right to production of deeds and undertaking for safe custody.

IN WITNESS, &c.

No. LXIII.

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

MORTGAGE *by* TENANT *for* LIFE *under section* 18 *of the* SETTLED LAND ACT, 1882, *to* RAISE *money for* ENFRANCHISEMENT *or for* EQUALITY *of* EXCHANGE *or* PARTITION. (*Another form, where the subject of the enfranchisement, exchange, or partition is also the subject of the mortgage.*)

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, E. F. of, &c., and G. H. of, &c. (*trustees of the settlement*), of the second part, and C. D. of, &c. (*mortgagee*), of the third part (*Recite that A. B. is tenant for life and E. F. and G. H. trustees for purposes of Settled Land Acts as in last precedent, and recite also deed*

Recital of settlement and of deed of enfranchisement, exchange, or partition;

(*c*) If the property mortgaged is copyhold, the remainder of this proviso should be omitted, and the words "the conveyance hereby made shall be void" should be substituted.

of enfranchisement or exchange or partition, showing that the money for enfranchisement or for equality of exchange or partition was paid by the trustees at the request of the tenant for life) : AND WHEREAS the sum of £—— in the said indenture bearing even date herewith expressed to be paid by the said E. F. and G. H. for enfranchisement [*or* for equality of exchange *or* partition] as aforesaid, was advanced to them for that purpose by the said C. D. at the request of the said A. B., it having been agreed between the said A. B. and the said C. D. that the said C. D. should advance the same, and that the repayment thereof with interest should be secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, so as aforesaid paid by the said C. D. at the request of the said A. B. to the said E. F. and G. H. as the trustees of the said settlement (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said A. B., &c. (*remainder of precedent the same as the last one*).

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

that money paid for enfranchisement, &c., was advanced by mortgagee;

and agreement for mortgage.

Witnessing part.

Consideration.

IN WITNESS, &c.

No. LXIV.

MORTGAGE *by the* TRUSTEES *of a* SETTLEMENT *on behalf of an* INFANT TENANT IN TAIL *under sections* 18 *and* 60 *of the* SETTLED LAND ACT, 1882, *to* RAISE *money for* ENFRANCHISEMENT, *or for* EQUALITY *of* EXCHANGE *or* PARTITION.

BY TRUSTEES UNDER SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN E. F. of, &c., and G. H. of, &c. (*trustees of settlement*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite settlement sufficiently to show that A. B., an infant, is tenant in tail in possession, and that E. F. and G. H. are trustees of the settlement for the purposes of the Act*) : AND WHEREAS under the power in that behalf contained in the Settled Land Act, 1882, the said E. F. and G. H., on behalf of the said A. B., have agreed, &c. (*agreement for enfranchisement, exchange, or partition as in precedent No. LXII.*) : AND WHEREAS the said E. F. and G. H., on behalf of

Parties.

Recital of settlement;

Agreement by trustees on behalf of infant tenant in tail for enfranchisement, &c., and to borrow money on mortgage.

BY TRUSTEES UNDER SETTLED LAND ACT.

the said A. B., have requested, &c. (*agreement for loan, as in precedent No. LXII.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— on or before the execution of these presents paid by the said C. D. to the said E. F. and G. H. as trustees of the said settlement (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said E. F. and G. H., on behalf of the said A. B., and in exercise of the power for this purpose given to them by the Settled Land Act, 1882, and of all other powers (if any) them hereunto enabling, and as trustees, hereby convey, &c. (*remainder of precedent the same as No. LXII., omitting the covenant by A. B. to pay interest, and substituting in the acknowledgment of right to production of deeds*, "the said E. F. and G. H., on behalf of the said A. B.," *for* "the said A. B.").

Witnessing part.

Consideration.

Trustees on behalf of infant convey to mortgagee.

IN WITNESS, &c.

No. LXV.

SUBSTITUTED SECURITY UNDER SETTLED LAND ACT.

MORTGAGE *by* TENANT *for* LIFE *of* LANDS *by way of* SUBSTITUTION *for* LANDS RELEASED *by* MORTGAGEE *on a* SALE *under section* 5 *of the* SETTLED LAND ACT, 1882.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite mortgage by X. Y. to C. D., and will of X. Y., devising all his real estate in strict settlement, under which A. B. is tenant for life—death of testator—and probate of will*): AND WHEREAS the said A. B., under the powers of the Settled Land Act, 1882, lately agreed to sell the hereditaments comprised in the said indenture of mortgage to L. M. of, &c., and with a view to such sale the said A. B. agreed with the said C. D. that the said hereditaments hereinafter described and intended to be hereby conveyed (being part of the real estate devised by the said will as aforesaid) should be substituted for the hereditaments agreed to be sold as aforesaid

Parties.

Recital of mortgage and of will of mortgagor;

Agreement by tenant for life to sell, and between tenant for life and mortgagee for substitution of other property as security;

as a security for the said mortgage debt of £—— and the interest thereof: And whereas the said sale has been carried into effect by an indenture bearing even date herewith, and the said C. D. joined in that indenture so as to release the hereditaments comprised therein from the said mortgage debt and the interest thereof: NOW THIS INDENTURE WITNESSETH that in consideration of the premises, the said A. B., in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the said C. D., All, &c. (*parcels*), To hold the same unto and to the use of the said C. D. in fee simple, subject to the same right or equity of redemption as immediately before the execution of the said indenture bearing even date herewith was subsisting in the hereditaments comprised in the said indenture of mortgage under or by virtue of that indenture, To the end and intent that the hereditaments hereby conveyed may be substituted for the hereditaments comprised in the said indenture of mortgage as a security for the said principal sum and interest thereby secured.

In witness, &c.

SUBSTITUTED SECURITY UNDER SETTLED LAND ACT.

That sale has been completed with concurrence of mortgagee.

Witnessing part.

Tenant for life conveys other hereditaments to mortgagee subject to same right of redemption, and by way of substitution for lands sold.

No. LXVI.

MORTGAGE *of* Reversionary Interest *in a Share of personal estate under a* Will,—Covenants *by the* Father *of* Mortgagor, *and by his* Mother *with a view to bind her* Separate Estate, *to pay the* Interest *by way of* Additional Security (*a*).

OF REVERSIONARY INTEREST IN PERSONALTY.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c., and E., his wife (*the father and mother of the said A. B.*), of the second

Parties.

(*a*) Notice of this deed should be given to the trustees of the will.

OF REVERSIONARY INTEREST IN PERSONALTY.

part, and G. H. of, &c. (*mortgagee*), of the third part: WHEREAS under the will of L. M., late of ——, deceased, dated the —— day of ——, and duly proved in the Principal Probate Registry of the High Court of Justice, the said A. B. is beneficially entitled to one equal third part or share of the residuary personal estate and effects of the said L. M., deceased, in reversion expectant on the decease or marriage again, whichever shall first happen, of N. O.: AND WHEREAS part of the residuary personal estate and effects of the said L. M., deceased, or of the investments of the produce thereof, consists of the sum of £—— £2$\frac{3}{4}$ per Cent. Consolidated Stock, now standing in the names of X. Y. and Y. Z., as the present trustees of the said will: AND WHEREAS neither the amount nor the particulars of the remainder (if any) of the residuary personal estate and effects of the said L. M,, deceased, can at present be ascertained (*Agreement for loan, supra*, p. 517): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said G. H., ALL THAT the one equal third part or share of him the said A. B., under or by virtue of the said will of the said L. M., deceased, expectant as aforesaid, of and in the said sum of £—— £2 15*s.* per Cent. Consolidated Stock, and of and in all other (if any) the residuary personal estate and effects of the said L. M., deceased, and the proceeds thereof, and of and in the stocks, funds, and securities in or upon or of which the same or any part thereof may be invested or consist, or by which the same may be represented, howsoever the same respectively may be invested, circumstanced, secured or described, and the income and accumulations thereof respectively: TO HOLD the same share and premises unto the said G. H.; PROVIDED ALWAYS that if the said sum of £——, with interest thereon, shall be paid to the said G. H. on the said —— day of —— next, according to the foregoing covenant in that behalf, the said share and premises hereby assigned shall at the request and cost of the said A. B. be re-assigned to him or them: AND IN PURSUANCE OF THE SAID AGREEMENT in this behalf, the said C. D., and, with intent to bind her separate estate, the said E. D., respectively, hereby

Recite will under which mortgagor is entitled to one-third of personal estate.

Funds of which part of personal estate consists.

Remainder of personal estate not ascertained.

Agreement for mortgage.

Witnessing part.

Consideration.

Assignment of personalty expectant on death or marriage of N. O.

to mortgagee.

Proviso for redemption.

Covenants by father and mother of mortgagor to pay the inte-

covenant with the said G. H. that in case and as often as the said A. B., or his representatives, shall neglect or fail to pay the interest on the said sum of £——, or any part thereof, for the space of fourteen days next after the respective days hereinbefore appointed for payment of such interest, they the said C. D. and E., his wife, or one of them, shall and will pay the interest on the said sum of £——, or so much of such interest as the said A. B., or his representatives, shall so for the time being have neglected or failed to pay.

OF REVERSIONARY INTEREST IN PERSONALTY.

rest in case of default.

In witness, &c.

No. LXVII.

MORTGAGE *by* Tenant for Life *and* Reversioner *of their interests in a* Residuary Estate *under a* Will. *The* Reversioner *joins as* Surety (*a*).

MORTGAGE BY TENANT FOR LIFE AND REVERSIONER OF RESIDUARY ESTATE UNDER A WILL.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*surety*), of the second part, and E. F. of, &c. (*mortgagee*), of the third part (*Recite will of G. H., whereby, after making certain devises and bequests, he gave all the residue of his real and personal estate to trustees upon trust for sale and conversion, to invest proceeds, and pay income to A. B. his wife for her life, and on her death to divide the principal between sons attaining twenty-one, and daughters attaining twenty-one or marrying, in equal shares—Death of testator and probate of his will*): And whereas there were issue of the said G. H. two children and no more, and the said C. D. is one of such children, and he has attained the age of twenty-one years: And whereas the said E. F. hath agreed to lend to the said A. B. the sum of £——, on having the repayment thereof with interest secured to him in the manner hereinafter expressed: And whereas the said C. D. hath agreed to join in these presents as surety for the said A. B. in manner

Parties.

Recite will of testator, his death, and probate of the will,

that testator had issue two children, and that reversioner is one,

agreement for mortgage,

that reversioner has agreed to join as surety.

(*a*) Notice of this deed should be given to the trustees of the will.

MORTGAGE BY TENANT FOR LIFE AND REVERSIONER OF RESIDUARY ESTATE UNDER A WILL.

hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said A. B. and C. D. jointly and severally covenant with the said E. F. to pay, &c. (*to pay principal and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. and C. D., as beneficial owners, hereby respectively assign unto the said E. F., FIRST, ALL the estate and interest of the said A. B. for her own life under or by virtue of the said recited will in the residuary real and personal estate thereby devised and bequeathed, and in the moneys produced and to be produced by the sale and conversion thereof, and in the stocks, funds, and securities, of which the same respectively may for the time being consist, or by which the same respectively may for the time being be represented, and the income thereof: AND SECONDLY, ALL that the one undivided moiety or equal half part of the said C. D., under or by virtue of the said recited will expectant on the decease of the said A. B., in the same residuary real and personal estate, moneys, stocks, funds, securities, and income: TO HOLD the same unto the said E. F., PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be duly paid to the said E. F. on the said —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the premises hereby assigned shall be re-assigned to the said A. B. and C. D., according to their respective estates and interests respectively, and at their own expense.

Consideration.

Joint and several covenants by tenant for life and reversioner to pay principal and interest.

Tenant for life and reversioner assign life interest and reversion

to mortgagee,

subject to proviso for redemption.

IN WITNESS, &c.

No. LXVIII.

MORTGAGE *of a* REVERSIONARY INTEREST *and of a* POLICY OF ASSURANCE *on the* LIFE *of the* MORTGAGOR. CLAUSES *for the* CONVERSION *of* INTEREST *in arrear into* PRINCIPAL, *and precluding* MORTGAGEE *from* CALLING IN MONEY *until either* POLICY *or* REVERSIONARY INTEREST *falls in* (*a*).

OF REVERSIONARY INTEREST AND POLICY WITH COMPOUND INTEREST.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (hereinafter called "the mortgagees"), of the other part: WHEREAS, &c. (*Recite will under which A. B. is entitled to a share of the testator's residuary estate in reversion expectant on the death of X. Y., and death of testator and probate of will*): AND WHEREAS the said A. B. has requested the said mortgagees to lend to him the sum of £——, which they have agreed to do upon having the repayment thereof with interest secured to them in the manner hereinafter expressed: AND WHEREAS as part of the said intended security the said A. B. has effected an assurance with the —— Insurance Company for the sum of £——, to be paid to the executors, administrators, or assigns of the said A. B. in case he shall die in the lifetime of the said X. Y., by a policy dated the —— day of ——, 18—, and numbered ——, subject to the payment of an annual premium of £——: AND WHEREAS it has been agreed between the parties hereto that these presents shall contain such provisions as are hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid to the said A. B. by the mortgagees out of moneys belonging to them on a joint account, on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B. hereby covenants with the mortgagees to pay to them the sum of £—— on the —— day of —— next, with interest, &c. (*Covenant to pay principal and interest as in Precedent No. IV.*,

Parties.

Recital of will.

Agreement for loan.

Policy on mortgagor's life.

Witnessing part.

Covenant to pay principal and interest.

(*a*) Notice of this mortgage should be given to the trustees of the will and to the assurance company.

Since the abolition of the usury laws, a provision in a mortgage for capitalizing interest in arrear is valid. (Clarkson *v.* Henderson, 14 C. D. 348.)

OF REVERSIONARY INTEREST AND POLICY WITH COMPOUND INTEREST.

supra, p. 511): AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B. as beneficial owner hereby assigns unto the mortgagees, FIRST, the reversionary part or share of him the said A. B., expectant on the decease of the said X. Y., of and in the residuary estate of the said ——, and of and in the investments for the time being representing the same, AND SECONDLY, the hereinbefore recited policy of assurance, and the moneys assured by and to become payable under the same, TO HOLD the same unto the mortgagees subject to the following proviso (that is to say): PROVIDED ALWAYS, that if the said principal sum of £—— and the interest thereof shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the assignment hereinbefore made shall be void: AND the said A. B., &c. (*Covenants as to policy as in Precedent No. XXVII., supra*, p. 540): PROVIDED ALWAYS, and it is hereby agreed and declared, that if any interest on the said principal sum of £——, or on any sum or sums of money converted into principal under this clause, shall at any time be in arrear for thirty days after the half-yearly day hereby appointed for payment thereof, then and in every such case the interest so in arrear shall be converted into principal money, and be added to the principal sum hereby secured as on the day on which the same became due, as if the same had been money advanced by the mortgagees to the mortgagor on that day, and every sum of money converted into principal as aforesaid shall be payable by the mortgagor to the mortgagees on demand, and shall in the meantime bear interest after the rate, and payable on the half-yearly days aforesaid, and which interest shall, if in arrear, be convertible into principal under this clause: PROVIDED ALSO, and it is hereby agreed and declared, that the mortgagee shall not, during the joint lives of the said A. B. and X. Y., require payment of the said principal sum of £——, or of any sum or sums of money which shall be added thereto under the provision in that behalf hereinbefore contained, or any part thereof, if in the meantime the covenants of the mortgagor hereinbefore contained in relation to the policy of assurance hereby assigned shall be duly observed and performed: PROVIDED ALSO, that upon any sale of the premises hereby assigned, or any part thereof, expressed to be made

Assignment by mortgagor of reversionary interest and policy to mortgagees.

Proviso for redemption.

Clause for conversion of interest in arrear into principal.

Principal money not to be called in until policy or reversionary interest falls in if covenants as to policy are duly observed.

Purchaser on a sale not bound to enquire.

under the statutory power in that behalf, the purchaser shall not be bound to see or inquire whether the sale is consistent with the provisions hereinbefore contained, and if a sale is made in breach of such provisions, or any of them, the title of the purchaser shall not be impeached on that account.

OF REVERSIONARY INTEREST AND POLICY WITH COMPOUND INTEREST.

IN WITNESS, &c.

No. LXIX.

DEED *by a* LIMITED COMPANY *in the nature of a* DEBENTURE *charging the* UNDERTAKING *and all the* PROPERTY *present and future of the* COMPANY *with the repayment of a* LOAN (*a*).

DEBENTURE OF LIMITED COMPANY.

THE —— Company, Limited, whose registered office is at ——, do hereby acknowledge that they have received the sum of £—— from A. B. of, &c. (*lender*), by way of loan: AND the said company do hereby covenant with the said A. B. to pay to him, on the —— day of —— next, the sum of £——, with interest thereon in the meantime after the rate of £—— per

Company acknowledge receipt of money lent and covenant to repay it, and that same shall be a charge on all its property.

(*a*) This and the next Precedent are suggested to meet a case where a company wishes to borrow money on the security of all its property consisting of land and also of personal chattels. The debenture of an incorporated company is excepted from the operation of the Bills of Sale Act, 1882, by sect. 17, and it has been also held that a charge by an incorporated company on personal chattels does not require to be registered under the Bills of Sale Act, 1878. By the above Precedent the debenture is made a floating security on all the company's property, which would include personal chattels, and by the next Precedent the land of the company is mortgaged to the lender by way of further security. It will be borne in mind that the company will, notwithstanding the debenture, be at liberty to dispose of their property (other than the land included in the mortgage) in the ordinary course of their business, and that the debenture will attach only on the assets of the company existing at the time when a receiver is appointed or a winding-up takes place. (*Re* Florence Land and Public Works Company, 10 C. D. 530; *Re* Colonial Trusts Corporation, 15 C. D. 468.)

Although a debenture is generally one of a series, this is not necessary. The term "debenture" seems to include every document issued by a company which creates or acknowledges a debt. (Edmonds *v.* Blaina Furnace Company, 36 C. D. 215.)

DEBENTURE OF LIMITED COMPANY.

cent. per annum: And also, so long as the said principal sum shall remain unpaid to pay to the said A. B. interest thereon after the rate aforesaid by equal half-yearly payments on the —— day of ——, and the —— day of ——: And the said company do hereby charge their undertaking and all their property, both present and future, with the payment of the said principal sum and interest in accordance with the foregoing covenant, to the intent that this debenture shall be a floating security on the said undertaking and property, but so that the company shall not be at liberty to create any mortgage or charge in priority to this debenture, without the consent of the said A. B., his executors, administrators, or assigns.

In witness, &c.

No. LXX.

MORTGAGE OF LAND BY LIMITED COMPANY.

MORTGAGE *of* Freehold Property *by a* Limited Company (*to accompany the Debenture in the last Precedent*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between the —— Company, Limited, whose registered office is at ——, of the one part, and A. B. of, &c. (*mortgagee*), of the other part: Whereas the said company are seised in fee simple of the hereditaments intended to be hereby conveyed: And whereas, the said A. B. has advanced to the said company the sum of £——, and in consideration thereof the said company have executed a debenture to the said A. B., bearing even date with these presents, whereby they have covenanted to pay the sum of £—— to the said A. B. on the —— day of —— next, with interest thereon after the rate of £—— per cent. per annum: And also, so long as the said principal sum shall remain unpaid, to pay to him interest thereon after the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: And the said company have charged their undertaking and all their property present and future with the payment of the said sum of £—— and

Seisin of company of land.

Advance to company on security of debenture.

the interest thereof to the intent that the said debenture may be a floating security on the said undertaking and property: AND WHEREAS it was agreed on the treaty for an advance of the said sum of £——, that the repayment thereof with interest should be further secured by a mortgage of the said hereditaments: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises the said company as beneficial owners do hereby convey unto the said A. B., ALL that, &c. (*describe property*): TO HOLD the same unto and to the use of the said A. B. in fee simple, subject to the following proviso (namely): PROVIDED ALWAYS, that if the said principal sum of £—— and the interest thereof shall be duly paid in accordance with the said debenture the said hereditaments shall at the request and cost of the said company be reconveyed to them.

IN WITNESS, &c.

MORTGAGE OF LAND BY LIMITED COMPANY.

Agreement for further security.

Witnessing part.

Mortgage by company of land to mortgagee.

Proviso for redemption.

No. LXXI.

MEMORANDUM *of* DEPOSIT *of* TITLE DEEDS *to secure a given* SUM, *and* CHARGE *on the* PROPERTY *comprised in the* DOCUMENTS *deposited, and* AGREEMENT *to execute* LEGAL MORTGAGE *if required* (*a*).

MEMORANDUM OF DEPOSIT OF TITLE DEEDS.

MEMORANDUM that on this —— day of ——, A. B. of, &c. (*mortgagor*), has deposited with C. D. of, &c. (*mortgagee*), the documents comprised in the schedule hereto, with intent to create an equitable mortgage upon all the property comprised therein or to which the same relate, for securing the repayment by the said A. B. to the said C. D., on the —— day of —— next, of the sum of £1,000, this day advanced and paid by the said C. D. to the said A. B., together with interest thereon,

Parties.

Agreement that title deeds comprised in schedule shall be security for given sum.

(*a*) This instrument is chargeable with an *ad valorem* duty of 1*s.* for every £100, and every fractional part of £100. (54 & 55 Vict. c. 39, schedule, also sect. 86 (2).)

MEMORANDUM OF DEPOSIT OF TITLE DEEDS.

after the rate of £—— per cent. per annum, computed from the date thereof: AND THE SAID A. B. agrees at any time or times during the continuance of this security, upon the request of the said C. D., but at the cost of the said A. B., to execute to the said C. D. a legal mortgage (*b*) of the said property, with such powers and provisions and in such form as the said C. D. may require for further securing the payment of the said principal money and interest: [AND it is hereby further agreed (*c*) that in the meantime, and until a legal mortgage is executed as aforesaid, the said C. D., his executors, administrators, and assigns, shall have all the powers conferred on mortgagees by sections 19 to 24 both inclusive, and by section 67 of the Conveyancing and Law of Property Act, 1881, in like manner as if these presents had been a mortgage by deed, and that the said A. B. and all persons deriving title under him shall, upon any sale made under the said statutory power, execute and do such assurances and things for vesting in the purchaser the legal estate of the property sold as shall be required in that behalf by the person or persons by whom the sale shall have been made.]

Agreement by mortgagor to execute a legal mortgage, on request.

Power of sale.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*b*) See Hermann *v.* Hodges, L. R. 16 Eq. 18.

(*c*) The clause in brackets to be inserted if desired. Under it all the equitable estate of the mortgagor can be sold, and if on a sale he refuses to convey the legal estate to the purchaser the difficulty may be met by the conditions or agreement providing that the outstanding legal estate shall be got in at the purchaser's expense. See Conveyancing Act, 1881, s. 21; *In re* Hodson and Howe's Contract, 35 Ch. D. 668.

Sale under power in equitable mortgage passes equitable estate.

No. LXXII.

MEMORANDUM *of* DEPOSIT *of* TITLE DEEDS *to secure a given* SUM *and future* ADVANCES, *and* CHARGE *on the* PROPERTY *comprised in the* DOCUMENTS *deposited, and* AGREEMENT *to execute* LEGAL MORTGAGE *if required* (*d*).

MEMORANDUM OF DEPOSIT OF TITLE DEEDS TO SECURE FUTURE ADVANCES.

MEMORANDUM that on this —— day of ——, A. B. of, &c. (*mortgagor*), has deposited with C. D. of, &c. (*mortgagee*), the documents comprised in the schedule hereto, with intent to create an equitable mortgage on all the property comprised therein, or to which the same relate, for securing the repayment by the said A. B. to the said C. D., on the —— day of —— next, of the sum of £——, which has been advanced by the said C. D. to the said A. B., together with interest thereon, after the rate of £—— per cent. per annum, to be computed from the date hereof, and also for the repayment of such further sum or sums as shall at any time or times hereafter, whilst the said documents shall continue in the possession of the said C. D., be advanced by him to the said A. B., together with interest thereon after the rate aforesaid, to be computed from the time or respective times of advancing the same respectively, at the expiration of six calendar months from the time or respective times of such respective advances being made: AND THE SAID A. B. agrees at any time or times during the continuance of this security, upon the request of the said C. D., but at the cost of the said A. B., to execute to the said C. D. a legal mortgage of the said property, with such powers and provisions and in such form as the said C. D. may require, for further securing the said principal moneys and interest (*insert, if desired, agreement that equitable mortgagee shall have statutory power, supra*, p. 612).

Parties.

Agreement that title deeds comprised in schedule shall be security for given sum and future advances.

Agreement by mortgagor to execute legal mortgage on request.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*d*) This instrument is chargeable with an *ad valorem* duty of 1*s.* for every £100, and will be a security in respect of the further advances for such an amount as the additional duty will extend to cover.

No. LXXIII.

MEMORANDUM OF DEPOSIT WITH BANKING COMPANY.

MEMORANDUM *of* DEPOSIT *of* TITLE DEEDS *with a* BANKING COMPANY *to secure* BALANCE OF ACCOUNT CURRENT (*a*).

Property comprised in deposited deeds to be security for current account.

I, the undersigned A. B. of, &c. (*mortgagor*), hereby acknowledge that I have this day deposited with the —— Banking Company the documents specified in the schedule hereto with intent to create an equitable mortgage upon all the property to which such documents relate, for the purpose of securing the payment to the said company of the balance which shall for the time being be owing from me to the said company on my account current with the said company for cheques, notes, or bills, drawn, accepted, or endorsed by me, or for advances made to me, or for my accommodation or benefit or otherwise howsoever (including interest with half-yearly rests, commission and other customary charges) : [AND I hereby agree (*b*) and declare that the said company may, at any time or times hereafter, sell the said property, or any part thereof, and may buy in at sales by auction, or rescind contracts for sale, and resell without being answerable or accountable for any loss or diminution in price, and may, with and out of the sale moneys, retain all moneys owing on this security, with all costs and expenses incurred in relation thereto, the surplus (if any) to be paid to me: AND I hereby agree to execute any deed or deeds which may be necessary in order to convey the legal estate to the pur-

Power of sale.

(*a*) This instrument will be a security for such an amount as the stamp duty at 1*s.* per cent. will extend to cover.

(*b*) If preferred, the following can be substituted for the power of sale in the text:—

AND I DECLARE that the said Company shall have all the powers conferred on mortgagees by sections 19 to 24 inclusive and section 67 of the Conveyancing and Law of Property Act, 1881, in like manner as if these presents had been a mortgage by deed, and I agree in the event of any sale by the said Company under the statutory power to execute all assurances which may be required for vesting the legal estate in the purchaser.

MEMORANDUM OF DEPOSIT WITH BANKING COMPANY.

chaser or purchasers: PROVIDED nevertheless that such power (yet so that this proviso shall not affect any purchaser under any sale pursuant to the said power) shall not be exercised unless default shall be made in payment of the balance on the said account current, or some part thereof, for one calendar month after a notice in writing demanding such payment shall have been given to me by or on behalf of the said company, or shall have been left for me at my usual or last-known place of abode in England or Wales, or at or upon some part of the property subject to this security, or unless such default shall be made for one calendar month after the said account shall have been closed (which shall first happen) (*c*)]: AND I hereby further agree at any time or times, upon the request of the said company, but at the cost of myself, to execute to the said company a legal mortgage of such property, in such form and with such power of sale and other provisions as the said company may require for securing the payment of the moneys secured by such deposit and equitable mortgage as aforesaid: AND I hereby also agree that if, at the time when the said account current shall be closed, a balance shall be owing from me to the said company, I will, so long as such balance as aforesaid or any part thereof shall remain owing, pay interest thereon to the said company after the rate of £5 per cent. per annum, computed from the time when such balance shall be ascertained: AS WITNESS my hand this —— day of ——, 18—.

Agreement by mortgagor to execute legal mortgage on request.

To pay interest on balance after account is closed.

THE SCHEDULE ABOVE REFERRED TO.

(*c*) See note (*c*), at p. 612.

No. LXXIV.

OF DEPOSIT OF MISCELLANEOUS SECURITIES.

MEMORANDUM *of* DEPOSIT *of* MISCELLANEOUS SECURITIES *with a* BANKING COMPANY *to secure* BALANCE OF ACCOUNT CURRENT (*a*).

Property, moneys, and advantages comprised in deposited documents to be security for account current.

I, the undersigned A. B. of, &c. (*mortgagor*), do hereby acknowledge that I have this day deposited with the —— Banking Company the documents comprised in the schedule hereunder written to the intent that the same, and all the property, moneys, and advantages, comprised in, secured or represented by, and derivable under or by virtue of such documents, shall be a security for the payment to the said company of the balance for the time being owing from me to the said company on my account current with the said company for cheques, notes, or bills drawn, accepted, or indorsed by me, or for advances made to me or for my accommodation or benefit or otherwise howsoever (including also interest with half-yearly rests, commission, and other customary charges):

Power of sale.

[AND I hereby agree and declare that the said company may, at any time or times after default by me in such payment, sell the said property, moneys, and advantages, and the securities for the same or any of them, or any part thereof, and may buy in or rescind contracts for sale, and resell without being accountable for any loss or diminution in price, and may, out of the sale moneys, retain all moneys owing on this security, with all costs and expenses incurred in relation thereto, the surplus (if any) to be paid to me (*b*):]

Agreement by mortgagor to pay interest on balance after account is closed.

AND I hereby also agree that if at the time when the said account shall be closed a balance shall be owing from me to the said company, I will, so long as such balance, or any part thereof, shall remain owing, pay interest thereon to the said company, after the rate of £5 per cent. per annum, computed from the time when such balance shall be ascertained: As WITNESS my hand this —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) See *supra*, p. 614, note.

(*b*) See note (*c*), at p. 612.

No. LXXV.

DEED *of* FURTHER CHARGE (*c*).

FURTHER CHARGE.

(A.) *Where the mortgage deed is recited.*

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between the said A. B. of the one part, and the said C. D. of the other part (hereinafter referred to as "the principal indenture"), ALL, &c. (*parcels*) (*d*), were conveyed by the said A. B. unto and to the use of the said C. D. in fee simple by way of mortgage for securing payment to him of the sum of £1,000, with interest thereon: AND WHEREAS the said principal sum of £—— remains owing, but all interest thereon has been paid up to the —— day of —— last: AND WHEREAS the said C. D. has agreed to lend to the said A. B. the further sum of £—— on having the repayment thereof, with interest thereon, secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the further sum of £500 now paid to the said A. B. by the said C. D. (*the receipt whereof, &c.*), the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next (*e*), the sum of £500, with

Recite mortgage.

That principal is still due.

Covenant by mortgagor to pay further advance and interest.

(*c*) This and some of the subsequent precedents are framed so as to be applicable (A.) where the further charge recites the mortgage; (B.) where it is expressed to be supplemental to it, as suggested by sect. 53 of the Conveyancing Act, 1881; and (C.) where it is indorsed on the mortgage.

Form (B.) is recommended for general adoption.

(*d*) If the parcels are long, they need not be fully set out in the recital, but it will be sufficient to describe them in some concise manner, *e.g.*— "the messuage and lands called —— Farm, situate in the parish of ——, in the county of ——, in the said indenture particularly described," [*or* "the capital messuage called —— House, situate, &c.,"] and "divers other messuages, lands, and hereditaments, situate in, &c., therein particularly described." The above observation applies to transfers and reconveyances, as well as to deeds of further charge.

Mode of describing parcels in recital of mortgage.

(*e*) This should be the next half-yearly day for payment of interest mentioned in the mortgage deed.

FURTHER CHARGE.

interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents: And also so long after that day as any principal money remains due under these presents to pay to him interest thereon after the rate aforesaid by equal half-yearly payments, on the —— day of ——, and the —— day of ——: And further, that all the lands and hereditaments comprised in the principal indenture shall stand charged with the payment to the said C. D. of the said sum of £500 hereinbefore covenanted to be paid, and the interest thereof, in addition to the sum of £1,000 and interest secured by the principal indenture.

That property comprised in mortgage shall be a security for further as well as original advance.

In witness, &c.

(B.) *Where the further charge is expressed to be supplemental to the mortgage.*

By supplemental deed.

THIS INDENTURE, &c. (*date and parties as above*), and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c. and made, &c. being a mortgage of a messuage and lands, called —— Farm, situate in the parish of ——, in the county of ——, to secure payment by the said A. B. to the said C. D. of the sum of £——, with interest thereon [*or, if the further charge is written at the end of the mortgage*, supplemental to the above-written indenture of mortgage (*d*)]. (*The rest to be the same as* (A.).)

(C.) *Where the further charge is indorsed on the mortgage* (*e*).

By indorsement.

THIS INDENTURE, made the —— day of ——, Between the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: Whereas

(*d*) It is assumed that the later deed is written at the end of the mortgage deed. If, as is sometimes done, it is engrossed on a separate parchment and attached to the principal deed after execution, the principal deed must be recited or referred to sufficiently for identification, just as if there were no annexation.

(*e*) If the further charge is written at the end of instead of indorsed on the mortgage, it may be either expressed to be supplemental as in (B.), or this form (C.) may be used, substituting "above" for "within" throughout.

the principal sum of £——, secured by the within-written indenture still remains owing, but all interest, &c.: NOW, &c. (*The rest will be the same as* (A.), *substituting* "the within-written indenture" *for* "the principal indenture.")

FURTHER CHARGE.

IN WITNESS, &c.

No. LXXVI.

FURTHER CHARGE *where there have been several* PRIOR ONES.

FURTHER CHARGE WHERE THERE HAVE BEEN PRIOR ONES.

(A.) *Where the mortgage and prior further charges are recited.*

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS, &c. (*Recite mortgage, as in last Precedent, supra*, p. 617): AND WHEREAS by two several indentures, dated respectively the —— day of ——, and the —— day of ——, and made between the parties hereto, the hereditaments comprised in the principal indenture were charged with the payment by the said A. B. to the said C. D. of the further sums of £——, and £——, and interest thereon respectively: AND WHEREAS the principal sums of money secured by the principal indenture and the said indentures of further charge respectively, remain owing, but all interest thereon has been paid up to the —— day of —— last: AND WHEREAS (*agreement to lend further sum, supra*, p. 617): NOW, &c. (*Rest the same as last Precedent, substituting at the end for* "in addition to the sum of £1,000, and interest," &c., *the words*, "in addition to the sums of £——, £——, and £——, secured by the principal indenture and the said indentures of further charge respectively.")

Parties.

Recite mortgage and two prior deeds of further charge.

That moneys remain due.

IN WITNESS, &c.

FURTHER CHARGE WHERE THERE HAVE BEEN PRIOR ONES.

(B.) *Where the deed is expressed to be supplemental to the previous ones.*

By supplemental deed.

THIS INDENTURE, made, &c. (*date and parties*), and supplemental to an indenture between the same parties, dated the —— day of —— (*hereinafter called the principal indenture*), being a mortgage of lands and hereditaments, situate at, &c., for securing payment by the said A. B. to the said C. D. of the sum of £——, and interest thereon, and supplemental also to two indentures between the same parties, dated respectively the —— day of ——, and the —— day of ——, whereby the said lands and hereditaments were charged with the payment by the said A. B. to the said C. D. of the further sums of £——, and £——, and interest thereon [*or*, and supplemental to the above-written indentures of mortgage and further charge, dated respectively (*dates*)]: WHEREAS, &c. (*The rest to be the same as* (A.).)

IN WITNESS, &c.

(C.) *Where this further charge and the previous ones are indorsed on the mortgage* (*a*).

By indorsement.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the principal sums of £——, £——, and £——, secured by the within-written indenture of mortgage, and the indentures of further charge indorsed thereon, and dated respectively the —— day of ——, and the —— day of ——, still remain owing, but all interest thereon has been paid up to the —— day of —— last: NOW, &c. (*Rest the same as* (A.).)

IN WITNESS, &c.

(*a*) See p. 618, note (*e*).

No. LXXVII.

FURTHER CHARGE *on a* LIFE INTEREST *and* POLICY *of* ASSURANCE PREVIOUSLY MORTGAGED, *and* COLLATERAL SECURITY *on a* NEW POLICY *effected in the* NAME *of the* MORTGAGEE (*by indorsement on Precedent No. XXIX.*).

FURTHER CHARGE AND COLLATERAL SECURITY.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the principal sum of £—— secured by the within-written indenture remains owing, but all interest thereon has been paid up to the —— day of —— last: AND WHEREAS the said C. D. hath agreed to lend to the said A. B. the further sum of £500, upon having the re-payment thereof, with interest for the same, secured to him in the manner hereinafter expressed: AND WHEREAS by a policy (*Recite policy on the life of A. B. in the name of C. D., supra*, p. 405): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*Covenant by mortgagor to pay principal and interest, supra*, p. 506): AND FURTHER, that the dividends, interest, and annual produce, and policy of assurance comprised in the within-written indenture shall stand charged, &c. (*as in Precedent No. LXXV. to the end*, p. 618): AND IT IS HEREBY AGREED AND DECLARED, that the said C. D. shall stand possessed of the hereinbefore recited policy of assurance and the moneys thereby assured, subject to the same right of redemption as is now subsisting in the within-mentioned policy of assurance, and the moneys thereby assured, under or by virtue of the within-written indenture, and the further charge hereinbefore made (*Covenants by A. B. to keep on foot* "the hereinbefore recited policy," *and* "otherwise in relation thereto"—see *supra*, p. 540).

Parties.

Recite that principal sum remains owing.

Agreement for further advance.

Witnessing part.

Covenant to pay principal and interest, and further charge.

Agreement that mortgagee shall hold new policy,

subject to same right of redemption, &c., as former policy.

IN WITNESS, &c.

No. LXXVIII.

FURTHER CHARGE *on* FREEHOLDS *comprised in a* FORMER MORTGAGE, *and* MORTGAGE *of* ADDITIONAL FREEHOLDS, *both* PROPERTIES *being made a* SECURITY *for the* ORIGINAL DEBT *and* FURTHER ADVANCE (*a*).

FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS, BOTH PROPERTIES TO BE SECURITY FOR BOTH DEBTS.

Parties.

Recite former mortgage.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between the said A. B., of the one part, and the said C. D., of the other part, ALL that farm, &c., called —— therein particularly described, was conveyed by the said A. B. unto the said C. D. in fee simple, subject to a proviso for the redemption of the said hereditaments on payment by the said A. B. to the said C. D. of the sum of £1,000 and interest thereon: AND WHEREAS the said principal sum of £1,000 remains due upon the security of the said indenture, but all interest thereon has been paid up to the date of these presents:

Agreement for further advance on having the same as well as the original mortgage debt secured on property comprised in first mortgage and by a mortgage of additional property.

AND WHEREAS the said C. D. has agreed to lend to the said A. B. the further sum of £500 upon having the repayment thereof, with interest thereon, secured by a further charge on the hereditaments comprised in the said indenture, and upon having the repayment of both the said sums of £1,000 and £500, making together £1,500, and the interest thereof, further secured by a mortgage of the hereditaments intended to be hereby conveyed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 (*covenant by A. B. to pay* £500, *and interest*, *supra*, p. 506): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration, &c., THE SAID A. B. hereby covenants with the said C. D. that the hereditaments comprised in the hereinbefore recited indenture shall stand charged, &c. (*further charge*, *see supra*, p. 618): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner,

Mortgagor conveys additional property to the mortgagee, in fee simple.

(*a*) This plan is to be preferred to the insertion of a general clause in either deed negativing sect. 17 of the Conveyancing Act, 1881. (See *supra*, p. 456.)

hereby conveys unto the said C. D. All, &c. (*parcels*), To hold the same unto and to the use of the said C. D. in fee simple: Provided always, that if the said sum of £1,000 secured by the hereinbefore recited indenture and the interest thereof, and also the said sum of £500 hereinbefore covenanted to be paid and the interest thereof, shall be duly paid on the —— day of —— next, then and in such case the hereditaments hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them. (*Declaration as to leasing power if desired, supra*, p. 507.)

In witness, &c.

FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS, BOTH PROPERTIES TO BE SECURITY FOR BOTH DEBTS.

Proviso for redemption of both properties on payment of original mortgage debt and further advance.

No. LXXIX.

TRANSFER *of* Mortgage *of* Freeholds, *without the* concurrence *of the* Mortgagor, *by* Supplemental Deed (*a*).

TRANSFER OF MORTGAGE OF FREEHOLDS.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*transferee*), of the other part; and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made between G. H. (*mortgagor*), of the one part, and the said A. B., of the other part, being a mortgage of certain lands and hereditaments known as —— farm, situate in, &c., for securing payment by the said G. H. to the said A. B. of the sum of £——, with interest thereon: Whereas the said principal sum of £—— remains owing to the said A. B., but all interest thereon has been paid up to the date of these presents (*b*): And whereas the said C. D. hath agreed to pay to the said A. B. the sum of £——, on having a transfer (*b*) of the said mortgage

Parties.

Recite mortgage.

That mortgage debt is still due.

Agreement by transferee to pay the sum due on having transfer.

(*a*) This precedent can easily be adapted to a case where the mortgage is recited. The recital will be as in Precedent No. LXXV., *supra*, p. 617.

(*b*) If the interest is in arrear, or if any money representing accruing interest is paid by the transferee, the stamp must cover the amount of such interest.

TRANSFER OF MORTGAGE OF FREEHOLDS.

debt, and the interest thereof, and the securities for the same, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as mortgagee, hereby assigns unto the said C. D., THE said principal sum of £—— secured by the principal indenture, and all interest henceforth to become due thereon, and the full benefit of all securities for the same(*c*): TO HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, THE SAID A. B., as mortgagee, hereby conveys unto the said C. D., ALL the lands and hereditaments comprised in the principal indenture: TO HOLD the same unto and to the use of the said C. D., in fee simple, subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the principal indenture.

Assignment of mortgage debt and interest,

and the benefit of securities,

to transferee absolutely.

Conveyance of freeholds to transferee,

subject to equity of redemption.

IN WITNESS, &c.

Variation where the transfer is indorsed on the mortgage.

By indorsement.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. of, &c. (*transferor*), of the one part, and C. D. of, &c. (*transferee*), of the other part: WHEREAS the principal sum of £—— secured by the within-written indenture remains owing to the said A. B., but all interest, &c. (*same as* (A.), *substituting the words* "the within-written indenture," *for* "the principal indenture," *throughout*).

IN WITNESS, &c.

(*c*) It is not necessary that the mortgage debt should be assigned in order to retain its priority (Phillips *v.* Gutteridge, 4 D. & J. 531); but it is always prudent to do so when the mortgagor is a party, in order to show that the transferee is depending on the old security (Watts *v.* Symes, 2 De G. Mac. & Gor. 240).

A power of attorney is no longer necessary, as the debt passes at law, if notice is given to the mortgagor. (See 36 & 37 Vict. c. 66, s. 25, sub-s. 6.)

No. LXXX.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where there have been several* PRIOR TRANSFERS *and a* FURTHER CHARGE.

TRANSFER WHERE THERE HAVE BEEN PRIOR TRANSFERS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. (*transferor*), of the one part, and C. D. of, &c. (*transferee*), of the other part; and supplemental to the following deeds, namely, (1) an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a mortgage, &c. (*as in last precedent*); (2) an indenture, dated, &c., and made, &c., being a transfer of the said mortgage to the said ——; (3) an indenture, dated, &c., and made, &c., being a transfer of the said mortgage to the said ——; (4) an indenture, dated, &c., and made, &c., being a transfer of the said mortgage to the said A. B.; and (5) an indenture, dated, &c., and made, &c., being a further charge on the said hereditaments in favour of the said A. B. for £——: WHEREAS the principal sums of £—— and £——, secured by the principal indenture, and the said further charge still remains owing to the said A. B., but all interest thereon has been duly paid up to the date of these presents: AND WHEREAS the said C. D. has agreed to pay to the said A. B. the sum of £—— upon having a transfer of the said principal sums of £—— and £—— and the interest thereof, and the securities for the same in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— (*amount of aggregate debt*) paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), The said A. B., as mortgagee, hereby assigns unto the said C. D. the said principal sums of £—— and £—— secured by the principal indenture and the said indenture of further charge dated the —— day of ——: TO HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH, &c. (*conveyance of mortgaged hereditaments to C. D. in fee simple*, subject to such right or equity of redemption as is now subsisting therein under the principal indenture and the said indenture of further charge).

IN WITNESS, &c.

No. LXXXI.

STATUTORY TRANSFER.

STATUTORY TRANSFER *of a* STATUTORY MORTGAGE, MORTGAGOR NOT JOINING (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage, the —— day of ——, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part, supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, and made between, &c., being a mortgage of lands and hereditaments, situate, &c., for securing the sum of £—— and interest, WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said C. D., being the aggregate amount of £—— mortgage-money, and £—— interest due in respect of the said mortgage, of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagee, hereby conveys and transfers to C. D. the benefit of the said mortgage.

Transfer by transferor of benefit of mortgage.

IN WITNESS, &c.

(*a*) The above is Form (A.) in the 3rd Schedule to the Conveyancing Act, 1881, except that it supplies what is wanting in that form, viz., a short reference to the property comprised in the prior mortgage deed. With reference to a deed in the above form, it is provided by sect. 27 of the Act that it shall have effect as follows:—

"(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage-money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee. (ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption."

See the observations on the statutory mortgage form at p. 508, *supra*, which observations apply also to the statutory transfer of mortgage forms.

No. LXXXII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where the* MORTGAGOR *joins.*

TRANSFER WHERE MORTGAGOR JOINS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the first part, C. D. of, &c. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part and supplemental, &c. (*as in Precedent No. LXXIX., substituting C. D. for G. H.*): WHEREAS the said principal sum of £—— remains owing, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said E. F., at the request of the said C. D., has agreed to pay to the said A. B. the sum of £—— on having a transfer of the said mortgage debt, and the interest thereof, and the securities for the same, in manner hereinafter expressed: NOW THIS INDENTURE, &c. (*Assignment of mortgage debt and interest, as in Precedent No. LXXIX. substituting E. F. for C. D.*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL the lands and hereditaments comprised in the principal indenture: TO HOLD the same unto and to the use of the said E. F., in fee simple, subject to such right or equity of redemption as is now subsisting therein by virtue of the principal indenture: AND the said C. D. hereby covenants with the said E. F. to pay the principal sum hereby assigned on the —— day of —— next, with interest thereon after the rate aforesaid, and also so long after that day as the principal sum or any part thereof remains owing, to continue to pay interest thereon at the same rate upon the half-yearly days appointed for payment thereof by the principal indenture.

Parties.

Recite agreement for transfer.

First witnessing part.

Transfer of mortgage debt.

Second witnessing part.

Mortgagee and mortgagor convey freeholds to transferee, subject to equity of redemption.

Mortgagor covenants with transferee to pay principal and interest.

IN WITNESS, &c.

No. LXXXIII.

STATUTORY TRANSFER, COVENANTOR JOINING.

DEED *of* STATUTORY TRANSFER, *a* COVENANTOR JOINING (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage the —— day of ——, BETWEEN A. B. of, &c., of the first part; C. D. of, &c., of the second part, and E. F. of, &c., of the third part, supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, and made between, &c., being a mortgage of lands and hereditaments, situate at, &c., for securing £—— and interest, WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said E. F., being the mortgage-money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum the said A. B. hereby acknowledges the receipt, the said A. B. as mortgagee, with the concurrence of the said C. D., who joins herein as covenantor, hereby conveys and transfers to E. F. the benefit of the said mortgage.

IN WITNESS, &c.

(*a*) The above is Form (B.) in the 3rd Schedule to the Act, with an addition referring to the property comprised in the mortgage in order to supply the defect of the form in this respect. With reference to a deed in this form, it is provided by the 27th section that there shall also be deemed to be included, and there shall by virtue of the Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor, to the effect following, namely:—"That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest."

No. LXXXIV.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES (*b*) *of the* SURVIVOR *of* TWO MORTGAGEES *by deed* INDORSED *on the* MORTGAGE.

TRANSFER OF MORTGAGE BY PERSONAL REPRESENTATIVES OF MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*personal representatives of survivor of two mortgagees*), of the first part; E. F. of, &c. (*mortgagor*), of the second part, and G. H. of, &c. (*transferee*), of the third part: WHEREAS the within-named L. M. died on the —— day of ——, and the within-named N. O. died on the —— day of ——, having made his will dated, &c., and thereby appointed the said A. B. and C. D. to be the executors thereof, who duly proved the same in the Probate Registry at —— of the High Court of Justice on the —— day of ——: AND WHEREAS the principal sum of £—— secured by the within-written indenture of mortgage still remains owing, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said G. H. has agreed, at the request of the said E. F., to pay the sum of £—— to the said A. B. and C. D., upon having a transfer of the said mortgage in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. and C. D. by the said G. H. (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as the personal representatives of the said N. O., deceased, hereby assign unto the said G. H., &c. (*transfer of principal sum and interest, and benefit of securities to G. H. absolutely, supra*, p. 624): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. and C. D., as such personal representatives as aforesaid, hereby convey, and the said E. F., as beneficial owner, hereby conveys and confirms, &c. (*Conveyance of mortgaged property to G. H., subject to equity of redemption, supra*, p. 624).

Parties.

Recital of deaths of mortgagees and will of survivor.

That principal money remains due.

Agreement for transfer.

Transfer of principal money and interest.

Conveyance of mortgaged property.

IN WITNESS, &c.

(*b*) See Conveyancing Act, 1881, s. 30.

No. LXXXV.

TRANSFER OF MORTGAGE OF FREEHOLDS WHERE FURTHER SUM IS ADVANCED.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where a* FURTHER SUM *is advanced to the* MORTGAGOR.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*transferor*), of the first part; C. D. of, &c. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part: WHEREAS (*a*) by an indenture dated, &c., and made, &c., the hereditaments intended to be hereby conveyed were conveyed by the said C. D. unto and to the use of the said A. B. in fee simple, subject to a proviso for the redemption thereof, upon payment by the said C. D. to the said A. B. of the sum of £500 with interest thereon: AND WHEREAS the said principal sum of £500 remains owing to the said A. B., but all interest thereon has been paid up to the date of these presents:

Recite that mortgage debt is still due.

Agreement for transfer and for making further advance.

AND WHEREAS the said E. F. hath agreed, at the request of the said C. D., to pay to the said A. B. the sum of £500, and to lend to the said C. D. the further sum of £200, on having a transfer of the said mortgage debt, and on having the repayment of the said sums of £500 and £200 (making together £700), with interest for the same, secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said E. F. (*the receipt, &c.*), the said A. B., as mortgagee, hereby assigns unto the said E. F., THE principal sum of £500 secured by the hereinbefore recited indenture, and the interest thereof, and the benefit of all securities for the same: TO HOLD the same unto the said E. F. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said sum of £500 paid by the said E. F. to the said A. B. as aforesaid, and also in consideration of the sum of £200 to the said C. D. at the same time paid by the said E. F. (the receipt of which sum of £200 the said C. D.

Consideration to mortgagee.

Assignment of mortgage debt.

Consideration to mortgagee and mortgagor.

(*a*) As this precedent is in effect a new mortgage, the old mortgage being kept on foot merely as a protection against mesne incumbrances, it would be inaccurate to make it a supplemental deed, and consequently the old mortgage is recited.

hereby acknowledges), he the said C. D. hereby covenants with the said E. F. to pay to him, on the —— day of —— next, the sum of £700, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents, and also, &c. (*to pay interest half-yearly, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said E. F., in fee simple, freed from all right or equity of redemption by virtue of the hereinbefore recited indenture, but subject to the following proviso: (namely), PROVIDED ALWAYS, that if the sum of £700, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said premises shall, at the request and cost of the said C. D., his heirs or assigns, be reconveyed to him or them (*Covenant by C. D. for insurance, if applicable, supra*, p. 506).

TRANSFER OF MORTGAGE OF FREEHOLDS WHERE FURTHER SUM IS ADVANCED.

Covenant by mortgagor to pay aggregate sum and interest.

Conveyance to transferee,

subject to proviso for redemption.

IN WITNESS, &c.

No. LXXXVI.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where a* FURTHER SUM *is advanced to the* MORTGAGOR (*by deed indorsed on or written at the end of the mortgage*).

TRANSFER WHERE FURTHER SUM IS ADVANCED, INDORSED OR WRITTEN AT END.

THIS INDENTURE, made the —— day of ——, BETWEEN the within- [*or* above-] named A. B. (*transferor*), of the first part, the within- [*or* above-] named C. D. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*) of the third part: WHEREAS the principal sum of £500 secured by the within- [*or* above-] written indenture remains owing, but all interest thereon has been paid up to the date of these presents: (*Recite agreement for transfer and new advance as in last Precedent*). NOW THIS INDENTURE WITNESSETH, that,

Parties.

Recite that mortgage debt remains due.

TRANSFER WHERE FURTHER SUM IS ADVANCED, INDORSED OR WRITTEN AT END.

&c. (*Transfer of mortgage debt as in last Precedent, substituting the "within-written" or "the above-written indenture" for "the hereinbefore recited indenture"*): AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of, &c. (*Covenant by C. D. to pay aggregate principal sum and interest as in last Precedent*): AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid the said A. B. as mortgagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms, unto the said E. F., ALL the lands and hereditaments comprised in the within- [*or* above-] written indenture: TO HOLD the same unto and to the use of the said E. F., in fee simple, freed from all right or equity of redemption under the within- [*or* above-] written indenture, but subject to the following proviso: (namely), PROVIDED ALWAYS, that if the sum of £700 with interest thereon shall be paid on the —— day of ——, according to the foregoing covenant in that behalf, the premises shall, at the request of the said C. D., his heirs or assigns, be reconveyed to him or them.

Transfer of mortgage debt, &c.

Conveyance by transferor, and confirmation by mortgagor, of hereditaments to transferee.

Proviso for redemption.

IN WITNESS, &c.

No. LXXXVII.

STATUTORY TRANSFER AND STATUTORY MORTGAGE.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined* (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage and statutory mortgage the —— day of ——, BETWEEN A. B. of, &c., of the first part; C. D. of, &c., of the second part, and E. F. of, &c., of the third part, supplemental

(*a*) This is Form (C.) in the 3rd Schedule to the Act, with respect to which sect. 27 provides, that if the deed of transfer is made in the Form (C.), it shall, by virtue of the Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage.

STATUTORY TRANSFER AND STATUTORY MORTGAGE.

to an indenture made by way of statutory mortgage dated the —— day of ——, and made between, &c., being a mortgage of lands and hereditaments, situate at, &c., for securing the sum of £—— and interest: WHEREAS the principal sum of £—— only remains due in respect of the said mortgage as the mortgage-money, and no interest is now due and payable thereon: AND WHEREAS the said C. D. is seised in fee simple of the land comprised in the said mortgage, subject to that mortgage: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said E. F., of which sum the said A. B. hereby acknowledges the receipt, and the said C. D. hereby acknowledges the payment and receipt as aforesaid (b), the said A. B., as mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said mortgage: AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration the said A. B., as mortgagee and according to his estate, and by direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms to the said E. F., ALL, &c., To HOLD to and to the use of the said E. F., in fee simple, for securing payment on the —— day of ——, of (c) the sum of £——, as the mortgage-money, with interest thereon at the rate of [*four*] per centum per annum.

Transfer of benefit of mortgage,

and conveyance of parcels to transferee.

IN WITNESS, &c.

[*Or in case of further advance, after* aforesaid *at* (b) *insert* and also in consideration of the further sum of £—— now paid by the said E. F. to the said C. D., of which sum the said C. D. hereby acknowledges the receipt; *and after* of *at* (c) *insert* the sums of £—— and £——, making together.]

*** Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

No. LXXXVIII.

TRANSFER OF MORTGAGE OF COPYHOLDS WITH CONCURRENCE OF MORTGAGOR.

TRANSFER *of* MORTGAGE *of* COPYHOLDS, *with the* CONCURRENCE *of the* MORTGAGOR (*a*) (*by indorsement*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the first part, the said C. D. of, &c. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part, and supplemental to an indenture (hereinafter called "the principal indenture") dated, &c., and made, &c., whereby certain lands and hereditaments being copyhold of the manor of ——, in the county of ——, were covenanted to be surrendered by the said C. D. to the use of the said A. B. in customary fee simple, subject to a condition for making void the surrender on payment by the said C. D. to the said A. B. of the sum of £—— with interest thereon on the —— day of —— then next: WHEREAS in pursuance of the covenant in that behalf contained in the principal indenture, the said copyhold hereditaments were on the —— day of —— surrendered out of court to the use of the said A. B., his heirs and assigns, subject to such condition as aforesaid, but the said A. B. has not been admitted tenant on the said surrender: AND WHEREAS (*Recite that mortgage debt is due, and agreement for transfer, supra*, p. 623): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*Assignment of mortgage debt, &c., by A. B. to E. F., supra*, p. 624): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D., as beneficial owner, hereby covenants with the said E. F., that he the said C. D. will forthwith, at his own cost,

Recite conditional surrender to mortgagee.

That mortgagee has not been admitted.

Transfer of mortgage debt.

Mortgagor covenants to surrender

Proper mode of transferring copyholds.

(*a*) Where the concurrence of the mortgagor can be obtained, and the mortgagee has not been admitted on the conditional surrender, the proper mode of effecting a transfer of a mortgage of copyholds is by entering up satisfaction on the former conditional surrender, and having a new conditional surrender to the transferee. If, by reason of the disability of the mortgagor, or any other reason, his concurrence cannot be obtained, the only mode of effecting a transfer seems to be that adopted in Precedent No. XCI., *infra*, unless the transferee is willing to allow the right to admittance on the old conditional surrender to remain vested in the transferor as a trustee for him until a new conditional surrender can be obtained from the mortgagor.

surrender, or cause to be surrendered, into the hands of the lord of the said manor, according to the custom of the said manor, ALL the copyhold hereditaments comprised in and covenanted to be surrendered by the principal indenture: TO THE USE of the said E. F., in customary fee simple, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject to a condition for making void the said surrender upon payment to the said E. F., on the —— day of —— next, of the said sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents: AND IT IS HEREBY AGREED AND DECLARED, that satisfaction shall be entered up on the said conditional surrender of the —— day of —— at the cost of the said C. D.

IN WITNESS, &c.

TRANSFER OF MORTGAGE OF COPYHOLDS WITH CONCURRENCE OF MORTGAGOR.

copyholds to use of transferee,

subject to condition for redemption.

Agreement for entering up satisfaction on former conditional surrender.

No. LXXXIX.

WARRANT *to* ENTER *up* SATISFACTION *of* CONDITIONAL SURRENDER.

WARRANT TO ENTER UP SATISFACTION.

MANOR *of* ——, *in the County of*——, I, A. B. of, &c., DO HEREBY ACKNOWLEDGE that I have this day received of and from E. F. of, &c., by the direction of C. D. of, &c., the sum of £——, in satisfaction of all principal moneys and interest secured by a conditional surrender made to me by the said C. D. of certain copyhold hereditaments held of the said manor, and bearing date the —— day of ——; and I do hereby direct and require the steward of the said manor to enter up satisfaction thereof on the court rolls of the said manor, and for so doing this shall be his sufficient warrant and authority. DATED this —— day of ——.

(Signed) A. B.

No. XC.

CONDITIONAL SURRENDER ON TRANSFER.

CONDITIONAL Surrender *by* Mortgagor *to* Transferee *of* Mortgage.

Manor *of* ——, *in the County of* ——} BE IT REMEMBERED, that on this —— day of ——, C. D. of, &c., comes before X. Y. of, &c., steward of the said manor, out of court, and in consideration of the sum of £—— paid by E. F. of, &c,, to A. B. of, &c., by the direction of him the said C. D., in satisfaction of all principal moneys and interest secured to the said A. B. by a conditional surrender of the copyhold hereditaments hereinafter described, which conditional surrender is dated the —— day of ——, surrenders into the hands of the lord of the said manor, by the hands and acceptance of the said steward, according to the custom of the said manor, All, &c. (*parcels*): To the use of the said E. F. and his heirs, at the will of the lord, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed: Subject nevertheless to this condition, that if the said C. D. shall, on the —— day of —— next, pay to the said E. F. the sum of £——, with interest for the same after the rate of £— per cent. per annum, computed from the date of this surrender (being the same principal money and interest as are secured by the covenant of the said C. D., contained in an indenture bearing even date herewith), then and in such case this surrender shall be void and of no effect, but otherwise shall remain in full force and virtue.

Taken and accepted the day and year above written, by me

(Signed) X. Y. (steward),
Steward of the manor.

No. XCI.

TRANSFER *of* MORTGAGE *of* COPYHOLDS.—*The* MORTGAGOR *being dead*, LEAVING *an* INFANT HEIR, *his* WIDOW *and* ADMINISTRATRIX JOINS *in the* TRANSFER (*by Indorsement, or by deed written at the end of the mortgage*). OF COPYHOLDS WITH CONCURRENCE OF ADMINISTRATRIX OF MORTGAGOR.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named [*or* above-named] A. B. (*mortgagee*), of the first part, C. D. of, &c. (*administratrix of mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part: WHEREAS (*Recite conditional surrender by X. Y. to A. B. and that A. B. has not been admitted, supra*, p. 634): AND WHEREAS the said X. Y. died on the —— day of —— intestate, leaving the said C. D. his widow, and N. O. his only son and heir at law, and the said N. O. is under the age of twenty-one years: AND WHEREAS letters of administration of the estate and effects of the said X. Y. were, on the —— day of ——, granted to the said C. D. by the Probate Registry at —— of the High Court of Justice: AND WHEREAS the principal sum of £——, secured by the within-written [*or* above-written] indenture, still remains due, but all interest thereon has been duly paid up to the date of these presents: AND WHEREAS the said A. B. lately applied to the said C. D. to pay to him the said sum of £——, and the said C. D., not having moneys in her hands available for such purpose, hath requested the said E. F. to pay the same upon having a transfer of the said mortgage, in the manner hereinafter mentioned, which the said E. F. has agreed to do: NOW, &c. (*Assignment of mortgage debt by A. B. to E. F., supra*, p. 624): NOW THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby covenants with the said E. F., THAT he the said A. B., will forthwith, at the cost of the said C. D., or of the estate of the said X. Y., deceased, procure himself to be admitted tenant to the copyhold hereditaments described in the within-[*or* above-] written indenture pursuant to the said surrender of the —— day of ——, and will as soon as conveniently can be after such

Parties.

Recite conditional surrender to use of mortgagee, and that he has not been admitted.

Death of mortgagor intestate.

Administration granted to mortgagor's widow.

That mortgage money remains due.

Agreement for transfer.

First witnessing part.

Transfer of debt.

Second witnessing part.

Covenant by mortgagee to procure himself to be admitted, and after admittance to surrender to use of transferee,

OF COPYHOLDS WITH CONCURRENCE OF ADMINISTRATRIX OF MORTGAGOR.

admittance, at the like cost, surrender the same copyhold hereditaments into the hands of the lord of the said manor, To THE USE of the said E. F. in customary fee simple, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject to such right or equity of redemption as is now subsisting in the said hereditaments by virtue of the said conditional surrender, dated the —— day of ——, and the within-written indenture: AND WILL in the meantime, and until such surrender, stand and be seised and possessed of the said copyhold hereditaments, IN TRUST for the said E. F. in customary fee simple, subject as aforesaid.

subject to right of redemption,

and in the meantime to stand seised of said copyhold premises in trust for transferee.

IN WITNESS, &c.

No. XCII.

ADMISSION AND SURRENDER ON TRANSFER.

ADMISSION *of* MORTGAGEE *to* COPYHOLDS, *and* SURRENDER *to* TRANSFEREE, PURSUANT *to the* COVENANT *in the* LAST PRECEDENT, *and* ADMISSION *of* TRANSFEREE.

Recite conditional surrender to use of mortgagee.

THE MANOR *of* ——, *in the county of* ——. WHEREAS on the —— day of ——, 18—, X. Y. of, &c., one of the copyhold tenants of this manor, came before P. Q., steward of the said manor, out of court, and in consideration of the sum of £—— to the said X. Y. paid by A. B. of, &c., the said X. Y. surrendered into the hands of the lord of the said manor, ALL, &c. (*parcels*), with their appurtenances, to the use of the said A. B., his heirs and assigns, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject nevertheless to a condition for making void the said surrender upon payment by the said X. Y., unto the said A. B., of the sum of £——, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— then next: AND WHEREAS default was made in payment of the said principal sum of

That default was made.

£——, on the day mentioned in the said condition, and the same principal sum still remains due and owing to the said A. B., but all interest for the same has been paid up to this day: NOW BE IT REMEMBERED, that on this —— day of ——, 18—, the said A. B. comes before the said P. Q. out of court and prays to be admitted tenant to the said copyhold hereditaments surrendered to his use as aforesaid, To which said copyhold hereditaments the lord of the said manor by the said steward grants seisin thereof by the rod, To HOLD the same unto the said A. B. and his heirs, at the will of the lord, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed, And so (saving the right of the lord and the right of any person or persons having an equity of redemption in the said hereditaments) the said A. B. is admitted tenant thereof and pays to the lord on such his admittance a fine certain of £——, and his fealty is respited: AND BE IT FURTHER REMEMBERED, that on this —— day of ——, 18—, the said A. B. comes before the said steward out of court, and in consideration of the sum of £—— paid to him by E. F. of, &c., in satisfaction of the said principal sum of £—— due and owing on the said conditional surrender as aforesaid, surrenders into the hands of the lord of the said manor, by the hands and acceptance of his said steward, according to the custom of the said manor, ALL the copyhold hereditaments to which he the said A. B. was admitted as aforesaid, with their appurtenances, to the use of the said E. F., and his heirs, at the will of the lord according to the custom of the said manor, and at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject nevertheless to such equity of redemption as is now subsisting in the said premises under the aforesaid conditional surrender of the —— day of ——, 18—: AND BE IT FURTHER REMEMBERED, that on this —— day of ——, 18—, the said E. F. comes before the said steward out of court and prays to be admitted, &c. (*Admission of E. F. in the same form as the admission of A. B. supra.*)

ADMISSION AND SURRENDER ON TRANSFER.

Mortgagee prays to be admitted.

Grant to, and admittance of, mortgagee.

Mortgagee surrenders

to use of transferee,

subject to right of redemption.

Admittance of transferee.

No. XCIII.

OF MORTGAGE OF FREEHOLDS AND COPYHOLDS WHERE NO SURRENDER HAS BEEN MADE.

TRANSFER *of* MORTGAGE *of* FREEHOLDS, *and of* COPYHOLDS *where* NO SURRENDER *has been* MADE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the first part, C. D. of, &c. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part, and supplemental, &c. (*as in No. LXXXVIII.*):

Recite that no surrender has been made.

WHEREAS no surrender has been made of the copyhold hereditaments comprised in the principal indenture pursuant to the covenant therein contained (*Recite that principal sum remains owing, and agreement for transfer, supra*, p. 623): NOW THIS INDENTURE WITNESSETH, &c. (*Assignment of mortgage debt, &c., by A. B. to E. F., supra*, p. 624): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, at the request of the said C. D. hereby conveys unto the said E. F., ALL the freehold and copyhold hereditaments conveyed and covenanted to be surrendered respectively by the principal indenture, TO HOLD the same unto and to the use of the said E. F., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the principal indenture. AND THIS INDENTURE ALSO WITNESSETH, that, &c. (*covenant by C. D. to surrender copyholds to E. F., subject to condition, supra*, p. 634):

First witnessing part.

Transfer of mortgage debt.

Second witnessing part.

Conveyance of freeholds and copyholds,

to transferee, subject to equity of redemption.

Time for payment to be extended to a day specified.

PROVIDED ALWAYS and it is hereby declared that the time for payment of the said principal sum hereby assigned shall be extended to the —— day of —— next, and that the principal indenture and these presents shall henceforth take effect as if the said principal sum had been made payable by the principal indenture on the said —— day of —— next, instead of on the day therein named in that behalf.

IN WITNESS, &c.

No. XCIV.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS (*by* SUPPLEMENTAL DEED).

OF MORTGAGE OF FREEHOLDS AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*transferee*), of the other part, and supplemental to an indenture (hereinafter called "the principal indenture") dated, &c., and made, &c., being a mortgage in fee simple of certain freehold lands and hereditaments situate at, &c., and a mortgage by sub-demise of certain leasehold hereditaments situate at, &c., held under a lease dated the —— day of ——, 18—, for securing payment by the said —— to the said A. B. of the principal sum of £—— with interest thereon: WHEREAS, &c. (*Recitals that mortgage debt is still due, and agreement by transferee to pay the sum on having transfer*): NOW THIS INDENTURE WITNESSETH, that, &c. (*assignment of mortgage debt and interest and benefit of securities to transferee*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys and assigns unto the said ——: ALL the freehold and leasehold hereditaments comprised in and conveyed and demised respectively by the principal indenture: TO HOLD the same as to the said freehold hereditaments unto and to the use of the said C. D. in fee simple, and as to the said leasehold hereditaments unto the said C. D. for all the residue now unexpired of the term of years granted therein by the principal indenture, subject as to all the said hereditaments to such right or equity of redemption as is now subsisting therein by virtue of the principal indenture.

Parties.

Description of principal deed.

Recitals.

Conveyance and assignment of freeholds and leaseholds by mortgagee to transferee,

subject to equity of redemption.

IN WITNESS, &c.

No. XCV.

TRANSFER OF MORTGAGE OF POLICY, ETC., THE DEBT ADDITIONALLY SECURED BY THE MORTGAGOR.

TRANSFER *of* MORTGAGE *of a* POLICY *of* ASSURANCE *and a sum of* STOCK, *in which the* MORTGAGOR *joins for the purpose of securing the payment of the* DEBT *by a charge on* ADDITIONAL PROPERTY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the first part, C. D. of, &c. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part: WHEREAS (*Recite policy of assurance on the life of C. D. to secure the payment of* £100 *to his representatives on his death*):

Recite indenture under which mortgagor became interested in a reversionary share in stock.

AND WHEREAS under an indenture dated, &c., and made between (*parties*), the said C. D. became entitled to a certain sum of £—— £2$\frac{3}{4}$ per cent. Consolidated Stock, standing in the names of —— and —— in the books of the Governor and Company of the Bank of England as trustees thereof, expectant on the death of X. Y. of &c.:

Mortgage of policy and stock.

AND WHEREAS by an indenture dated, &c., and made between the said C. D. of the one part, and the said A. B. of the other part, the said C. D. assigned the said policy of assurance and the moneys thereby assured, and his reversionary interest in the said sum of £—— Consolidated Stock unto the said A. B., by way of security for the payment by the said C. D., unto the said A. B., of the sum of £500 and interest thereon after the rate of £4 per cent. per annum:

That principal sum is still due.

AND WHEREAS the said sum of £500 is still owing on the security of the said indenture of mortgage, but all interest thereon hath been paid up to the date of these presents:

Will under which mortgagor is entitled to annuity.

AND WHEREAS under or by virtue of the last will of G. H., late of, &c., deceased, dated the —— day of ——, the said C. D. is entitled to an annuity of £40 during his life, charged upon an estate situate, &c., which by the said will was devised to —— in fee simple:

Agreement for transfer.

AND WHEREAS the said A. B. having occasion for the said sum of £500, the said E. F. hath at the request of the said C. D. agreed to pay the same to the said A. B. on having a transfer of the said mortgage, and on having the payment of the said mortgage debt and the interest thereof further secured in the manner hereinafter expressed: NOW THIS

TRANSFER OF MORTGAGE OF POLICY, ETC., THE DEBT ADDITIONALLY SECURED BY THE MORTGAGOR.

INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said E. F. at the request of the said C. D., THE SAID A. B., as mortgagee, hereby assigns (*Assignment of mortgage debt, &c., to E. F., supra*, p. 624): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, THE said A. B., as mortgagee, at such request as aforesaid, hereby assigns, and the said C. D., as beneficial owner, hereby assigns and confirms unto the said E. F., THE hereinbefore recited policy of assurance, and the moneys, bonuses, and advantages thereby assured or to become payable thereunder, and also the said sum of £—— £2$\frac{3}{4}$ per cent. Consolidated Stock, and the dividends and annual income thereof respectively: TO HOLD the same (subject, nevertheless, as to the said sum of £—— £2$\frac{3}{4}$ per cent. Consolidated Stock to the interest of the said X. Y. therein as aforesaid), unto the said E. F., subject to such right or equity of redemption as is now subsisting therein by virtue of the hereinbefore recited indenture of mortgage: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D., as beneficial owner, hereby conveys and assigns unto the said E. F., THE said annuity of £40 to which the said C. D. is entitled during his life under the said will of the said G. H. as aforesaid, and all sums now due and henceforth to become due on account thereof, and all powers and remedies for securing, recovering, and enforcing payment thereof: TO HOLD the same unto the said E. F., subject to the same or the like right of redemption as is now subsisting in the said policy of assurance, and sum of £—— £2$\frac{3}{4}$ per cent. Consolidated Stock, and with and under the same or the like powers and privileges as are in and by the hereinbefore recited indenture of mortgage conferred upon the said A. B., in relation to the said policy of assurance and sum of £—— Consolidated Stock respectively.

Assignment of mortgage debt.

Assignment of policy and stock,

to transferee, subject to equity of redemption.

Mortgagor conveys annuity

to transferee, subject to right of redemption, &c.

IN WITNESS, &c.

No. XCVI.

TRANSFER ON CHANGE OF TRUSTEES.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *on the Change of one of* TWO TRUSTEES (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*transferors*), of the one part, the said C. D. and E. F. of, &c. (*transferees*), of the other part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a mortgage of certain lands and hereditaments situate at, &c., for securing payment by the said —— to the said A. B. and C. D. of the sum of £1,000 with interest thereon: WHEREAS the said sum of £1,000 still remains owing, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. and E. F. have now become entitled to the said principal sum of £1,000 upon a joint account, and in consequence thereof the said A. B. and C. D. have agreed to transfer to them the said mortgage debt and the securities for the same in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, THE SAID A. B. and C. D., as mortgagees, hereby assign unto the said C. D. and E. F. (*b*): (*Assignment of mortgage debt, &c., supra*, p. 624): TO HOLD the same unto the said C. D. and E. F.: AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, THE said A. B. and C. D., as mortgagees, hereby convey and assign unto the said C. D. and E. F. (*b*), ALL the freehold and leasehold messuages, lands,

Description of principal deed.

Recite that principal sum is still due.

That transferees have become entitled, and agreement for transfer.

Transfer of mortgage debt.

Conveyance of parcels to use of transferees, subject to subsisting

(*a*) It has been already stated why trustees advancing trust funds on mortgage generally take the security in such a form as not to disclose the fact that the money advanced is held on a trust. (*Supra*, p. 510.) For the same reason it is important, on the appointment of a new trustee of the funds, so to frame the transfer of the debt and securities that the trusts shall continue to be kept off the title. Hence the present form, in which it is sufficient to recite that in the events that have happened, C. D. and E. F. have become entitled, and to draw the transfer to them, so that the debt and securities may vest in them as joint tenants. (See *In re* Harman and Uxbridge, &c. Rail. Co., 24 Ch. 720.)

Transfer on appointment of new trustee should not disclose trust.

(*b*) By sect. 50 of the Conveyancing Act, 1881, it is provided that freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

Freeholds and things in action may be conveyed by a person to himself and another.

and hereditaments comprised in the principal indenture: To HOLD the same, as to the said freehold premises, unto and to the use of the said C. D. and E. F. in fee simple, and as to the said leasehold premises unto the said C. D. and E. F. for all the residue now unexpired of the said term granted therein by the principal indenture, subject as to all the said premises to such right or equity of redemption as is now subsisting therein by virtue of the same indenture.

TRANSFER ON CHANGE OF TRUSTEES.

right of redemption.

Assignment of leaseholds to transferees for residue of term.

IN WITNESS, &c.

No. XCVII.

TRANSFER *of* PART *of* MONEY *secured by* MORTGAGE, *and* CONVEYANCE *of the* MORTGAGED PROPERTY, *so as to vest in* TRANSFEROR *and* TRANSFEREE *jointly* (*a*) (*by indorsement*).

TRANSFER OF PART OF MORTGAGE.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagee*), of the one part, and C. D. of, &c. (*transferee*), of the other part, WITNESSETH, that in consideration of the sum of £500 now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), THE said A. B., as mortgagee, hereby assigns unto the said C. D., THE sum of £500, part of the principal sum of £2,000 secured by the within-written indenture: AND all interest henceforth to become due on the said sum of £500: To HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby conveys unto the said A. B. and C. D., ALL the hereditaments comprised in the within-written indenture: To HOLD the same unto and to the use of the said A. B. and C. D., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the within-written indenture, upon payment to the said

Parties.

Mortgagee assigns part of mortgage debt to transferee,

and conveys mortgaged property to himself and transferee jointly, subject to equity of redemption.

(*a*) Sometimes the transferee of part is satisfied with a declaration of trust from the mortgagee, without any conveyance of the mortgaged property to vest in the two jointly.

TRANSFER OF PART OF MORTGAGE.

C. D. of the said sum of £500 and interest hereby assigned, and to the said A. B. of the sum of £1,500 (residue of the said principal sum of £2,000), and the interest thereof.

IN WITNESS, &c.

No. XCVIII.

TRANSFER OF PART OF MONEY SECURED BY CONTRIBUTORY MORTGAGE.

TRANSFER *of* PART *of* MONEY *secured on a* CONTRIBUTORY MORTGAGE *where the* TRANSFEROR *holds a* DECLARATION *of* TRUST *executed to him by the* MORTGAGEES (*written at the foot of the declaration of trust*).

KNOW ALL MEN by these presents that I, the above-named A. B., in consideration of the sum of £—— now paid to me by C. D. of, &c. (the receipt whereof I hereby acknowledge), do

Assignment by mortgagee to transferee,

hereby assign unto the said C. D. the principal sum of £—— to which I am entitled under the above-written indenture and the declaration of trust thereby made: AND all interest henceforth to become due thereon: To HOLD the same unto the said

and covenant.

C. D. absolutely: And I hereby covenant with the said C. D. that I have not received any part of the said sum of £——, and have not done anything whereby I am prevented from assigning the same to him in manner aforesaid.

IN WITNESS, &c.

No. XCIX.

TRANSFER OF SEVERAL MORTGAGE DEBTS AND THEIR SECURITIES, AND ADDITIONAL PROPERTY CHARGED WITH OLD AND FURTHER ADVANCE.

TRANSFER *of* TWO *several* MORTGAGE DEBTS *and the* SECURITIES *for* EACH, *and* CONVEYANCE *of* ADDITIONAL PROPERTY *by* MORTGAGOR *to the intent that all the* PROPERTY *vested in* TRANSFEREE *may be a* SECURITY *for both* MORTGAGE DEBT *and a* FURTHER ADVANCE.

THIS INDENTURE, made the —— day of ——, BETWEEN

Parties.

A. B. of, &c. (*transferor of the first mortgage*), of the first part, C. D. of, &c. (*transferor of the second mortgage*), of the second

TRANSFER OF SEVERAL MORTGAGE DEBTS AND THEIR SECURITIES, AND ADDITIONAL PROPERTY CHARGED WITH OLD AND FURTHER ADVANCE.

part, E. F. of, &c. (*mortgagor*), of the third part, and G. H. of, &c. (*transferee*), of the fourth part: WHEREAS (*Recite mortgage to A. B. of* "the hereditaments firstly hereinafter described," *to secure* £500 *and interest*): AND WHEREAS (*Recite mortgage to C. D. of* "the hereditaments secondly hereinafter described," *to secure* £200 *and interest*): AND WHEREAS the said E. F. is seised of the hereditaments firstly, secondly, and thirdly hereinafter described for an estate in fee simple in possession, subject as to the said hereditaments firstly and secondly hereinafter described to the hereinbefore recited mortgages respectively, but free from all other incumbrances: AND WHEREAS the said sum of £500 remains owing on the security of the said indenture of the —— day of ——, but all interest on the same has been paid up to the date of these presents: AND WHEREAS the said sum of £200 remains owing on the security of the said indenture of the —— day of ——, but all interest on the same has been paid up to the date of these presents: AND WHEREAS the said G. H. hath agreed at the request of the said E. F. to pay to the said A. B. the sum of £500, and to the said C. D. the sum of £200, and to lend to the said E. F. the further sum of £400 on having transfers of the said several mortgage debts of £500 and £200 respectively and the interest thereof, and the securities for the same respectively, and upon having the repayment of the said sums of £500, £200, and £400 respectively (making together the sum of £1,100), with interest for the same respectively, secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 now paid by the said G. H. to the said A. B., at the request of the said E. F. (*the receipt, &c.*), THE SAID A. B., as mortgagee, hereby assigns, &c. (*assignment of mortgage debt of* £500, *and interest, and the securities for the same, supra*, p. 624): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the sum of £200 now paid by the said G. H. to the said C. D., at the request of the said E. F. (*the receipt, &c.*), THE SAID C. D., as mortgagee, hereby assigns, &c. (*assignment of mortgage debt of* £200, *and interest, and the securities for the same, supra*, p. 624): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the several sums of £500 and £200 paid by the said G. H., to the said A. B. and C. D. respectively as herein-

Recite two mortgages of separate properties.

Seisin in fee of mortgagor.

That mortgage money remains owing on both mortgages.

Agreement for transfer and further advance.

Witnessing part.

One mortgagee assigns his mortgage debt to new mortgagee.

Another mortgagee assigns his debt.

TRANSFER OF SEVERAL MORTGAGE DEBTS AND THEIR SECURITIES, AND ADDITIONAL PROPERTY CHARGED WITH OLD AND FURTHER ADVANCE.

before is mentioned, and in consideration of the sum of £400 now paid by the said G. H. to the said E. F. (*the receipt, &c.*), THE SAID E. F. hereby covenants with the said G. H., &c. (*to pay principal sum of* £1,100 *and interest, supra*, p. 506): AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, the said A. B., as mortgagee, as to the hereditaments firstly hereinafter described, and the said C. D., as mortgagee, as to the hereditaments secondly hereinafter described, at the request of the said E. F., hereby respectively convey, and the said E. F., as beneficial owner, as to all the hereditaments hereinafter described, hereby conveys and confirms unto the said G. H., FIRST, ALL, &c. (*parcels, as described in the mortgage to A. B.*), AND all other (if any) the hereditaments comprised in the said indenture of the —— day of ——: SECONDLY, ALL, &c. (*parcels, as described in mortgage to C. D.*), AND all other (if any) the hereditaments comprised in the said indenture of the —— day of ——: AND, THIRDLY, ALL, &c. (*additional parcels*): TO HOLD the same unto and to the use of the said G. H. in fee simple, freed and discharged as to the hereditaments comprised in the hereinbefore recited indentures of mortgage respectively from all right or equity of redemption now subsisting therein under or by virtue of the same indentures respectively, but subject as to all the said hereditaments to the proviso for redemption following, namely, that if, &c. (*proviso for redemption on payment of said* £1,100 *and interest. Declaration as to leasing power, if desired, supra*, pp. 506, 507).

Mortgagees and mortgagor convey the hereditaments comprised in the existing mortgages, and additional hereditaments

to new mortgagee, subject to proviso for redemption.

IN WITNESS, &c.

No. C.

RECONVEYANCE BY MORTGAGEE.

RECONVEYANCE *of* LANDS *by* MORTGAGEE *on* PAYMENT *of* DEBT *and* INTEREST *by* SUPPLEMENTAL DEED (*a*), *with* VARIATION *where the deed is* INDORSED.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c.

(*a*) If it is preferred to recite the mortgage instead of making the reconveyance a supplemental deed, the mortgage can be recited as in Precedent No. LXXV., *supra*, p. 617.

(*mortgagor*), of the other part: and supplemental to an indenture dated, &c., and made, &c. (*date and parties*) (hereinafter called "the principal indenture"), being a mortgage of certain lands and hereditaments situate at, &c., for securing payment by the said C. D. to the said A. B. of the sum of £——, and interest thereon: WITNESSETH, that in consideration of all principal money and interest secured by the principal indenture having been paid (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as mortgagee, hereby conveys unto the said C. D., ALL the lands and hereditaments comprised in the principal indenture; TO HOLD the same unto and to the use of the said C. D. in fee simple, freed and discharged from all principal money and interest secured by and all claims and demands under the principal indenture.

RECONVEYANCE BY MORTGAGEE.

Description of principal deed.

Mortgagee reconveys

to mortgagor.

IN WITNESS, &c.

Variation where the re-conveyance is indorsed on the mortgage.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagee*), of the one part, and the within-named C. D. (*mortgagor*), of the other part: WITNESSETH, that, &c. (*the rest the same as above, substituting* "the within-written indenture," *for* "the principal indenture").

By indorsement.

IN WITNESS, &c.

No. CI.

RECONVEYANCE *of* FREEHOLDS, *where there have been several further* CHARGES *and* TRANSFERS.

RECONVEYANCE WHERE THERE HAVE BEEN FURTHER CHARGES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*mortgagor*), of the other part, and supplemental to the following deeds (namely): (1) an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a mortgage, &c.; (2) an indenture, &c. (*mention the several deeds*

Parties.

Description of prior deeds.

RECONVEYANCE WHERE THERE HAVE BEEN FURTHER CHARGES.

of further charge and transfer of mortgage, as in Precedent No. LXXX.): WHEREAS all principal moneys and interest secured by the principal indenture and the said indentures of further charge respectively have been paid and satisfied before the execution of these presents, as the said A. B. hereby acknowledges: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., as mortgagee, hereby conveys unto the said C. D. ALL the lands and hereditaments comprised in the principal indenture: TO HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all principal moneys and interest secured by, and all claims and demands under the principal indenture and the said indentures of further charge.

Recite that all principal moneys and interest have been paid.

Witnessing part.

Reconveyance.

IN WITNESS, &c.

No. CII.

RECONVEYANCE BY PERSONAL REPRESENTATIVES.

RECONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES *of the* TRANSFEREE *of the mortgage* (*by deed* INDORSED *or* WRITTEN AT THE END *of the mortgage*) (*a*).

THIS INDENTURE, made the —— day of ——, 1882, BETWEEN A. B. of, &c., and C. D. of, &c (*personal representatives*), of the one part, and the within- [*or* above-] named E. F. (*mortgagor*), of the other part: WHEREAS L. M., named in the indenture of transfer dated the —— day of ——, 18—, indorsed on the within-written indenture [*or* L. M., named in the above-written indenture of transfer dated the —— day of £——, 18—], died on the —— day of ——, 1882, having made his will dated the —— day of ——, and thereby appointed the said

Parties.

Recital of death of transferee and his will.

(*a*) It is assumed in this case that the transferee died since the 31st of December, 1881, so that sect. 30 of the Conveyancing Act, 1881, applies.

A. B. and C. D. executors thereof, who duly proved the same in the principal Probate Registry of the High Court of Justice on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the within- [*or* above-] written indenture of mortgage having been paid and satisfied (the receipt whereof the said A. B. and C. D., as the personal representatives of the said L. M., deceased, hereby acknowledge), the said A. B. and C. D., as such personal representatives as aforesaid, hereby convey unto the said E. F. ALL the lands and hereditaments comprised in the within- [*or* above-] written indenture of mortgage: TO HOLD the same unto and to the use of the said E. F., in fee simple, absolutely discharged from all principal money and interest secured by and all claims and demands under the said indenture of mortgage.

RECONVEYANCE BY PERSONAL REPRESENTATIVES.

Personal representatives of transferee reconvey to mortgagor.

IN WITNESS, &c.

No. CIII.

SURRENDER *of* DERIVATIVE TERM *on payment of* MORTGAGE DEBT *and* INTEREST, *where the* MORTGAGE *is by* SUB-DEMISE.

SURRENDER OF SUB-TERM.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*mortgagor*), of the other part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., whereby a messuage and premises situate at, &c., comprised in an indenture of lease, dated the —— day of ——, 18—, were demised by the said C. D. unto the said A. B. for the residue of the term of 99 years granted therein by the said indenture of lease, except the last day thereof, by way of mortgage to secure payment of the sum of £—— and interest thereon: NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the principal indenture having been paid (the receipt whereof

Parties.

Description of principal deed.

Consideration.

SURRENDER OF SUB-TERM.

The mortgagee surrenders to mortgagor to the intent that the sub-term may merge in the original term out of which it was carved.

the said A. B. hereby acknowledges) : the said A. B., as mortgagee, hereby surrenders unto the said C. D., THE messuage and premises comprised in the principal indenture : TO THE INTENT that all the residue now unexpired of the said term of 99 years, wanting one day, may forthwith be merged in the said term of 99 years granted therein by the said indenture of lease.

IN WITNESS, &c.

No. CIV.

REASSIGNMENT OF LEASEHOLDS.

REASSIGNMENT *of* LEASEHOLDS, *the* MORTGAGE *of which had been* TAKEN *by* ASSIGNMENT *on* PAYMENT *of the* MORTGAGE DEBT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*mortgagor*), of the other part, and supplemental, &c. (*as in last precedent, substituting "assigned" for "demised," and omitting "except the last day thereof"*) : NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*as in last precedent*), the said A. B., as mortgagee, hereby assigns unto the said C. D. The messuage and premises comprised in the principal indenture, TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of —— years therein, absolutely discharged from all principal money and interest secured by and all claims and demands under the principal indenture.

Mortgagee reassigns leaseholds to mortgagor for residue of the term,

discharged from all moneys secured by the said indenture of mortgage.

IN WITNESS, &c.

No. CV.

RECONVEYANCE AND RELEASE OF FREEHOLDS AND COPYHOLDS.

RECONVEYANCE *and* RELEASE *of* FREEHOLDS *and* COPYHOLDS *comprised in an* INDENTURE *of* MORTGAGE, *on* PAYMENT *of* DEBTS SECURED *by* INDENTURES *of* MORTGAGE *and further charge.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c.

(*mortgagor*), of the other part, and supplemental to the following instruments (namely), (1) an indenture (hereinafter called the principal indenture), dated, &c., and made, &c., being a conveyance and covenant for the surrender of certain freehold and copyhold hereditaments situate at, &c., by way of mortgage to secure, &c.; (2) a conditional surrender of the copyhold hereditaments made on the —— day of ——, 18—, in pursuance of the principal indenture; and (3) an indenture dated, &c., and made, &c., being a further charge of all the said freehold and copyhold hereditaments with the further sum of £—— and interest thereon: WITNESSETH, that in consideration of, &c., the said A. B., as mortgagee, hereby conveys unto the said C. D. ALL the freehold hereditaments comprised in the principal indenture: TO HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all principal money and interest secured by and all claims and demands under the principal indenture and the said indenture of further charge: AND for the consideration aforesaid the said A. B. hereby releases the said C. D., and also all the copyhold hereditaments, from all such principal money and interest, claims and demands as aforesaid (*a*).

RECONVEYANCE AND RELEASE OF FREEHOLDS AND COPYHOLDS.

Description of prior deeds.

Mortgagee reconveys freeholds

to mortgagor in fee.

Release by mortgagee of copyhold hereditaments.

IN WITNESS, &c.

No. CVI.

RECONVEYANCE *and* SURRENDER *of* FREEHOLDS *and* LEASEHOLDS, *which were* MORTGAGED *in* FEE *as to the* FREEHOLDS, *and by* SUB-DEMISE *as to the* LEASEHOLDS, *on* PAYMENT *of the* MORTGAGE DEBT *and* INTEREST (*by* INDORSEMENT *on the* MORTGAGE).

RECONVEYANCE OF FREEHOLDS AND SURRENDER OF SUB-TERM IN LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagee*), of the one part, and the

Parties.

(*a*) Simultaneously with the execution of this reconveyance the mortgagee should give a warrant to the steward of the manor to enter up satisfaction on the conditional surrender.

RECONVEYANCE OF LEASEHOLDS AND SURRENDER OF SUB-TERM IN LEASEHOLDS.

within-named C. D. (*mortgagor*), of the other part: WITNESSETH, that in consideration of all principal moneys and interest secured by the within-written indenture having been paid and satisfied (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as mortgagee, hereby conveys unto the said C. D. ALL the freehold hereditaments comprised in the within-written indenture: TO HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all principal money and interest secured by and all claims and demands under the within-written indenture: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. hereby surrenders unto the said C. D. ALL AND SINGULAR the leasehold hereditaments and premises comprised in the within-written indenture, absolutely discharged as aforesaid, TO THE INTENT that all the residue now unexpired of the within-mentioned term of 99 years, therein wanting the last ten days thereof, may forthwith be merged and extinguished in the said term of 99 years.

In consideration of payment of mortgage debt,

mortgagee reconveys freeholds and

surrenders leaseholds to

intent that sub-term may be merged in the original term.

IN WITNESS, &c.

No. CVII.

RELEASE BY MORTGAGEE OF TERM.

SURRENDER *by* MORTGAGEES *of a* TERM *of* YEARS *in* SETTLED LAND *where the* MORTGAGE *is* PAID OFF *out of the* PROCEEDS *of the sale of* PART *of the* SETTLED ESTATES (*by* SUPPLEMENTAL DEED).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*mortgagees*), of the first part, E. F. of, &c., and G. H. of, &c. (*trustees of settlement*), of the second part, and I. K. of, &c. (*tenant for life*), of the third part:

Description of prior deeds

WHEREAS these presents are supplemental to the following deeds, namely, (1) an indenture dated, &c., and made, &c., being a settlement of divers lands and hereditaments situate at, &c.; and (2) an indenture dated, &c., and made, &c., whereby the lands and hereditaments therein described, being

RELEASE BY MORTGAGEE OF TERM.

part of the settled hereditaments, were assigned unto the said A. B. and C. D. for the residue of a term of 1,000 years created by the said indenture of settlement by way of mortgage to secure payment of the sum of £——, and interest thereon: AND WHEREAS the said I. K. is tenant for life in possession under the said indenture of settlement of the hereditaments thereby settled: AND WHEREAS the said E. F. and G. H. are the trustees of the said settlement for the purposes of the Settled Land Acts, 1882 to 1890, and as such trustees they have in their hands capital-money liable to be applied under sect. 21 of the Act of 1882, in the discharge of incumbrances affecting the settled lands or any part thereof: AND WHEREAS the said E. F. and G. H., as such trustees as aforesaid, by the direction of the said I. K., have agreed out of the said capital-money to pay to the said A. B. and C. D. the principal sum of £—— secured by the said indenture of mortgage: AND WHEREAS all interest on the said principal sum has been duly satisfied up to the date of these presents: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, by the said E. F. and G. H., as such trustees as aforesaid, paid to the said A. B. and C. D. out of the said capital-money on or before the execution of these presents, the receipt whereof the said A. B. and C. D. hereby acknowledge, the said A. B. and C. D. as mortgagees, at the request of the said E. F. and G. H. and I. K., hereby surrender unto the said I. K., ALL the messuages, lands, and hereditaments comprised in the said indenture of mortgage: TO THE INTENT that the said term of 500 years may be merged and extinguished in the freehold and inheritance of the said premises, and that the said premises shall be freed and discharged from all principal money and interest secured by and all claims and demands under the said indenture of mortgage.

Recital of settlement, and that trustees have capital-money in their hands.

Agreement to pay off mortgage out of capital-money.

In consideration of payment of mortgage money, mortgagees surrender settled estates so as to merge term in freehold.

IN WITNESS, &c.

No. CVIII.

RECEIPT INDORSED ON BUILDING SOCIETY MORTGAGE.

RECEIPT *to be indorsed on or annexed to a* MORTGAGE *to a* BUILDING SOCIETY *on payment of the* MONEYS *secured thereby* (*a*).

THE ——— Building Society hereby acknowledges to have received all moneys intended to be secured by the within (*or* above) written deed. IN WITNESS whereof the seal of the said society is hereto affixed this —— day of ——, by order of the Board of Directors (*or* Committee of Management) in presence of,

A. B., Secretary [*or* Manager].
[*Other witnesses if any required by the rules of the Society.*]

Provision of Act as to indorsement on mortgage, of reconveyance or receipt.

(*a*) By the Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 42, it is provided, that when all moneys intended to be secured by any mortgage or further charge given to a society under the Act have been fully paid or discharged, the society may indorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager in the form specified in the schedule to the Act, and such receipt shall vacate the mortgage, or further charge, or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance or resurrender.

Operation and effect of indorsement of receipt.

The effect of the indorsement above mentioned is to vest the legal estate in the party or parties who may have the best right to call for it. For instance, where there is a mortgage to a building society, and after that there are successive equitable mortgages of the same property, and the society is paid off by the mortgagor, the effect of the indorsement is to vest the legal estate in the equitable mortgagee who is first in point of time, unless the society is paid off by a subsequent equitable mortgagee who had no notice of the prior incumbrance, in which case the legal estate would vest in that mortgagee. (Fourth City M. B. B. Society *v.* Williams, 14 C. D. 140.) And if the subsequent mortgagee advances an additional sum to the mortgagor at the same time, the protection afforded by the legal estate extends to the further advance. (Hosking *v.* Smith, 13 Ap. Cas. 582; overruling Pease *v.* Johnson, L. R. 3 Ch. 576; and Robinson *v.* Trevor, 12 Q. B. D. 423.)

No. CIX.

RECEIPT *to be indorsed on or annexed to a* MORTGAGE *to a* FRIENDLY SOCIETY *on payment of* MONEYS *secured thereby* (*a*).

RECEIPT INDORSED ON MORTGAGE TO FRIENDLY SOCIETY.

THE trustees of the —— Society hereby acknowledge to have received all moneys intended to be secured by the within [*or* above] written deed.

Signed (*Signature of trustees*).
Countersigned (*Signature of secretary*).
——, *Secretary*.

No. CX.

AGREEMENT *for the* LOAN *of a* SUM *of* MONEY *on* MORTGAGE (*b*).

AGREEMENT FOR LOAN OF MONEY ON MORTGAGE.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of —— (*intended mortgagor*) of the one part, and C. D. of —— (*intended mortgagee*), of the other part :— Parties.

I. THE said C. D. shall lend to the said A. B. the sum of £2,000 upon mortgage of the freehold and copyhold messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, the short particulars whereof are stated in the schedule hereto, provided that the said A. B. shall before the —— day of —— next deduce a good marketable title to the Agreement to lend.

(*a*) See Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 16, sub-s. (7).

(*b*) When a negotiation has been entered into for the loan of money on mortgage, and it is contemplated that the investigation of the title will be attended with expense, it is prudent on the part of the intended mortgagee to have an agreement in writing, as, if the title should turn out defective, or for any other reason the mortgage should not eventually be completed, there may, in the absence of an agreement, be a difficulty in recovering the expense incurred. When negotiation for loan on mortgage there should be agreement.

AGREEMENT FOR LOAN OF MONEY ON MORTGAGE.

said premises [and provided also that the said premises shall be valued by R. H. of, &c., or such other competent land surveyor as shall be appointed for that purpose by the said C. D., at the sum of £3,000 at least, clear of all outgoings] (*c*). And the said loan shall be made and the said mortgage shall be completed on the —— day of —— next, and time shall be deemed of the essence of the contract.

As to provisions of mortgage deed.

II. The principal money to be secured by the said mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof after the rate of £—— per cent. per annum, payable half-yearly, and the said mortgage shall contain covenants by the mortgagor for payment of the said principal money and interest, and shall also contain such powers and provisions as the mortgagees shall reasonably require for better securing the payment of the principal money and interest.

Costs to be borne by mortgagor.

III. All costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the mortgage to be made in pursuance hereof (including the investigation of the title, and the valuation of the premises) shall be paid by the said A. B., whether the mortgage shall eventually be completed or not, and whether such non-completion shall arise from [the premises not being of sufficient value, or from] the title proving defective, or from any other cause (not being the wilful default of the said C. D.).

In witness, &c.

The Schedule above referred to

(*c*) The words within brackets will be omitted where the intended mortgagee is satisfied as to the value.

No. CXI.

AGREEMENT *for the* LOAN *of a* SUM *of* MONEY *on* MORTGAGE, *with* PROVISIONS *for continuing the* LOAN *for a* TIME CERTAIN *and for the* APPOINTMENT *of a* RECEIVER.

AGREEMENT FOR LOAN OF MONEY ON MORTGAGE.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of —— (*intended mortgagor*), of the one part, and C. D. and E. F. of —— (*intended mortgagees*), of the other part:— Parties

I. THE said C. D. and E. F. agree to lend to the said A. B. the sum of £—— upon mortgage of the freehold and copyhold messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, the short particulars whereof are stated in the schedule hereto, provided that the said A. B. shall before the —— day of —— next deduce a good and marketable title to the said premises, and provided also that the said premises shall be valued by R. H. of &c. or such other competent land surveyor as shall be appointed for that purpose by the said C. D. and E. F., at the sum of £—— at least, clear of all outgoings. And the said loan shall be made and the said mortgage shall be completed on the —— day of —— next, and time shall be deemed of the essence of the contract. Agreement to lend.

II. THE principal money to be secured by the said mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof after the rate of £—— per cent. per annum, payable half-yearly, and to be reduced to £—— per cent. per annum in case the same shall be regularly paid within thirty days after the respective half-yearly days of payment thereof; and the said mortgage shall contain covenants by the mortgagor for payment of the said principal money and interest, and shall also contain provisions precluding the mortgagees from calling in the principal money before the expiration of seven years from the date of the mortgage, in case of such regular payment of interest as aforesaid, and also precluding the mortgagor from As to provisions of mortgage deed.

AGREEMENT FOR LOAN OF MONEY ON MORTGAGE.

compelling the mortgagees to receive the same within the like period of seven years. The said mortgage shall also contain such other powers and provisions as the mortgagees shall reasonably require for better securing the payment of the principal money and interest.

Mortgagees may appoint a receiver.

III. The mortgagees may, by a deed to be executed simultaneously with the mortgage, appoint a receiver of the rents and profits of the said premises, with such powers and duties as the mortgagees may think fit, for the purpose of better securing the regular payment of interest, and with such clauses and provisions for removing the receiver, and appointing new receivers from time to time, and otherwise, as are usually inserted in deeds of the like nature, including a proviso that the receiver shall not act until interest shall have become in arrear for one calendar month; and the said A. B. shall (if required) join in such receivership deed.

Costs to be borne by mortgagor.

IV. All costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the mortgage to be made in pursuance hereof (including the investigation of the title, and the valuation of the premises), shall be paid by the said A. B., whether the mortgage shall eventually be completed or not, and whether such non-completion shall arise from the premises not being of sufficient value, or from the title proving defective, or from any other cause (not being the wilful default of the said C. D. and E. F., or either of them).

In witness, &c.

The Schedule above referred to.

No. CXII.

AGREEMENT (*a*) *between* MORTGAGOR *and two* MORTGAGEES *of different properties as to* DOCUMENTS *relating to both properties and which have been delivered to one of the* MORTGAGEES. ACKNOWLEDGMENT *of the right of the other* MORTGAGEE *to production, and* AGREEMENT *that* DOCUMENTS *shall be delivered to him if his mortgage is subsisting when the other is paid off* (*b*). AGREEMENT AS TO DOCUMENTS.

MEMORANDUM OF AGREEMENT made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*one mortgagee*), of the second part, and E. F. of, &c. (*other mortgagee*), of the third part: WHEREAS by an indenture bearing even date herewith, and made, &c. (*parties*), certain lands and hereditaments situate, &c., therein described, have been conveyed by the said A. B. unto and to the use of the said C. D. in fee simple by way of mortgage to secure £—— and interest (*similar recital of mortgage to E. F.*): AND WHEREAS the documents specified in the schedule hereto relate to the hereditaments comprised in both the said indentures of mortgage, and the same have been delivered to the said C. D. subject to the arrangement hereinafter expressed: NOW the said C. D. hereby acknowledges the right of the said E. F. to production of the documents specified in the schedule hereto, and to delivery of copies thereof: AND IT IS HEREBY AGREED that if the first hereinbefore recited mortgage shall be paid off and satisfied while any money remains owing to the said E. F., his executors, administrators, or assigns, on the secondly hereinbefore recited mortgage, then and in such case the said documents shall be delivered to him or them.

Parties.

Recital of mortgages.

That documents in schedule have been delivered to one of the mortgagees.

Acknowledgment by one mortgagee of right of other to production.

Agreement that documents shall be delivered to other mortgagee if his mortgage is subsisting when the other is satisfied.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) This will require an agreement stamp.

(*b*) If two different properties held under the same title are mortgaged at the same time to two different mortgagees, it is necessary to make some arrangement about the custody of the title deeds. They may either be delivered to one mortgagee, he giving to the other an acknowledgment of the right to production, as is done in the above precedent, or they may be delivered to a firm of solicitors or bankers acting for both mortgagees or sets of mortgagees, and this is the plan adopted in the next precedent.

What arrangement should be made as to documents when two properties held under the same title are mortgaged to different persons.

No. CXIII.

MEMORANDUM AS TO DOCUMENTS.

MEMORANDUM *that* DOCUMENTS *are held by* SOLICITORS *on behalf of two sets of* MORTGAGEES *of different* PROPERTIES.

That documents relate to two properties mortgaged to different persons, and are in possession of solicitors on behalf of both sets of mortgagees.

MEMORANDUM: That the documents specified in the schedule hereto relate—(1) to certain lands and hereditaments situate in, &c., belonging to A. B. of, &c. (*mortgagor*), and by him mortgaged to C. D. of, &c., and E. F. of, &c. (*mortgagees*), by an indenture bearing even date with these presents to secure £—— and interest, and (2) to certain other lands and hereditaments situate in, &c., belonging to the said A. B., and by him mortgaged to G. H. of, &c., and I. K. of, &c. (*other mortgagees*), by another indenture bearing even date herewith to secure £—— and interest, and that the same are now in the possession of the undersigned, Messrs. —— & ——, as solicitors for and on behalf of the said C. D. and E. F., and also for and on behalf of the said G. H. and I. K., as such mortgagees respectively as aforesaid.

Dated the —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

(Signed) —— & ——, (*Solicitors*).

No. CXIV.

NOTICE BY SECOND MORTGAGEE TO FIRST MORTGAGEE.

NOTICE *by* SECOND MORTGAGEE *to a* FIRST MORTGAGEE.

To C. D. (*first mortgagee*).

WE HEREBY GIVE YOU NOTICE, that by an indenture dated, &c., and made, &c. (*date and parties*), the lands and hereditaments situate in the parish of ——, in the county of ——, in mortgage to you from the said A. B. (*mortgagor*), have been conveyed by him to the said E. F. (*second mortgagee*) by way of mortgage to secure £—— and interest.

Dated the —— day of ——, 18—.

(Signed)

Solicitors for the above-named E. F.

No. CXV.

NOTICE *by* MORTGAGEE *of a* POLICY *of* ASSURANCE *to the* OFFICE (*a*).

BY MORTGAGEES OF POLICY TO OFFICE.

To the —— Assurance Company.

I HEREBY GIVE YOU NOTICE that by an indenture dated, &c., and made, &c. (*date and parties*), a policy of assurance effected with you by the said A. B. on his life for the sum of £——, dated the —— day of —— 18—, and numbered ——, was assigned by the said A. B. to the said C. D. by way of mortgage: And I request you to deliver to me a written acknowledgment of the receipt of this notice (*b*).

Dated the —— day of ——.

(Signed) ——,
Solicitor for the said C. D.

No. CXVI.

NOTICE *by* MORTGAGEES *of* REVERSIONARY INTEREST *in settled* PERSONAL ESTATE *to* TRUSTEES *of Fund.*

BY MORTGAGEES OF REVERSIONARY INTEREST IN PERSONALTY TO TRUSTEES OF FUND.

To L. M. and N. O., the trustees of an indenture dated the —— day of ——, 18—, being a settlement made on the marriage of —— [*or*, the trustees of the will of ——, deceased].

WE HEREBY GIVE YOU NOTICE, that by an indenture dated, &c., and made, &c. (*date and parties*), the reversionary share of the said A. B. (*mortgagor*) in the trust funds comprised in the said indenture of settlement [*or*, in the trust moneys and funds representing the residuary estate of the said ——, or in, &c. (*following the language of the mortgage deed*)], was assigned by him to the said C. D. (*mortgagee*), subject to redemption as therein mentioned [*or*, was charged with the payment to the said C. D. of the moneys therein mentioned, or, &c. (*according to the terms of the deed.*)].

Dated the —— day of ——, 18—.

(Signed) ——,
Solicitors for the above-named C. D.

(*a*) See 30 & 31 Vict. c. 144, s. 3.
(*b*) A fee not exceeding 5*s.* will be payable for the acknowledgment: sect. 6.

No. CXVII.

BY MORTGAGEE TO TENANT.

NOTICE *by* MORTGAGEE *to* TENANT *not to pay rent to* MORTGAGOR.

I HEREBY give you notice that, by an indenture dated the —— day of ——, and made between A. B. of, &c., of the one part, and me of the other part, the messuage and piece of ground situate at ——, and now in your possession, were conveyed to me by the said A. B. by way of mortgage for securing the principal sum of £—— and interest thereon, and that under the said indenture the said principal sum is still due and owing, together with an arrear of interest thereon, and I therefore require you to pay to me the rent now and hereafter to accrue due in respect of the said premises, and on no account after the date hereof to pay any rent in respect of the said premises to the said A. B. or to any person or persons other than myself.

As WITNESS my hand the —— day of ——.

To C. D. (*tenant*). A. B. (*mortgagee*).

No. CXVIII.

BY MORTGAGOR TO PAY OFF.

NOTICE *by* MORTGAGOR *to pay off at the expiration of* SIX MONTHS.

I HEREBY give you notice that, at the expiration of six calendar months from the date hereof, I shall pay unto you, your executors, administrators, or assigns, the principal moneys and interest due and owing to you from me, on the security of a certain indenture dated the —— day of ——, and made between me of the one part, and you of the other part.

As WITNESS my hand this —— day of ——.

To C. D. (*mortgagee*). A. B. (*mortgagor*).

No. CXIX.

BY MORTGAGEE OF INTENTION TO SELL.

NOTICE *by* MORTGAGEE *to* MORTGAGOR *requiring* PAYMENT, *with a view to exercise* POWER *of* SALE *in case of* DEFAULT.

I HEREBY require you to pay to me the principal sum of £—— secured by a certain indenture dated the —— day of ——, and made between you of the one part, and me of the other part, and all interest then due thereon, and I hereby give you notice that if the same is not paid within three calendar months after the date hereof I shall proceed to sell the mortgaged property.

As WITNESS my hand this —— day of ——.

To C. D. (*mortgagor*). A. B. (*mortgagee*).

No. CXX.

BY MORTGAGEE OF INTENTION TO SELL.

NOTICE *by* MORTGAGEE *of intention to exercise* POWER *of* SALE, *to be left on the property, it not being known where the* MORTGAGOR *is, or whether he is living* (*a*).

To C. D. (*mortgagor*), if living, or his legal personal representative, and all other persons whom this notice may concern.

I HEREBY require the payment to me of the principal sum of £—— secured by an indenture dated, &c., and made, &c. (*state date and parties*), and all interest due thereon, And I give notice that if the same is not paid to me within three calendar months after the date of this notice I shall proceed to sell the mortgaged hereditaments.

As WITNESS my hand this —— day of ——, 18—.

A. B. (*mortgagee*).

(*a*) See Conveyancing Act, 1881, s. 67.

No. CXXI.

CONSENT BY MORTGAGEE TO LEASE BY MORTGAGOR.

CONSENT *by a* MORTGAGEE *to a* LEASE *to be made by* MORTGAGOR *under sect.* 18 *of the Conveyancing Act*, 1881, *there being a proviso in the Mortgage Deed requiring such consent.*

Recital of mortgage.

WHEREAS by an indenture dated the —— day of ——, 18—, and made between A. B. of the one part, and C. D. of the other part, a messuage or dwelling-house known as, &c. (*describing it*), was conveyed by the said A. B. to the said C. D. in fee simple by way of mortgage to secure payment of the sum of £—— with interest thereon: And by the said indenture it was provided that no lease made by the said A. B., his heirs or assigns, during the continuance of the said security should take effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, should consent thereto in writing: AND WHEREAS the said A. B. is desirous of granting a lease of the said messuage or dwelling-house to G. H. of, &c., for a term of twenty-one years at the yearly rent of ——, and has requested the said C. D. to give his consent thereto: NOW the said C. D. hereby consents to the proposed lease, provided that the same is made in accordance in all respects with section 18 of the said Act. Dated the —— day of ——, 18—.

And that mortgagor desires to make lease.

Consent by mortgagee.

(Signed) C. D. (*mortgagee*).

WITNESS, X. Y.

MEMORIALS.

An abstract of the principal provisions of the Middlesex Registry Acts, 1708 and 1891, and of the Yorkshire Registries Act, 1884, will be found in the dissertation on "Searches," *supra*, pp. 128 *et seq.*

Regulations as to memorials,

The first schedule to the Middlesex Act of 1891 and the Rules made under that Act prescribe regulations as to memorials which read together are in effect as follows:

to be written or printed on paper of a prescribed size, &c.

The memorial must be written or printed on the best white loan paper, sixteen inches long by ten inches wide, with an inner margin two inches wide and an outer margin three-quarters of an inch wide, and must be left at the office by hand, must bear Land Registry stamps for the amount of the fees, and be accompanied by the original instrument.

Signature and attestation.

The memorial must be under the hand of some or one of the grantors, or some or one of the grantees (or in the case of a will some or one of the devisees), his or their heirs, executors, or administrators, guardians, or trustees, attested by one witness, such witness to be a witness or one of the witnesses to the execution of the original instrument, unless at the date of the memorial every such witness is dead or absent from the United Kingdom or cannot be found, or some other sufficient cause exists to prevent it. In such cases a statutory declaration must be furnished and left with the memorial, stating the reason why the witness is not one of the witnesses to the instrument.

Contents of memorial.

Every memorial of any deed, conveyance, or will must contain the day of the month and the year when such deed, conveyance, or will bears date, and the names and additions of all the parties to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance, or will, and where practicable the places of their abode, and must express or mention the lands and hereditaments contained in such deed, conveyance, or will, and the names of all the parishes within the county where any such lands or hereditaments are lying and being that are given, granted, conveyed, devised, or any way affected or charged by any such deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect. But these particulars will only be required so far as the same appear from the original instrument, except that the

address or description of the witness to the memorial must in all cases be inserted.

Production of deed, &c. to registrar.

Every deed, conveyance, and will, or probate of the same, of which a memorial is to be registered, must be produced to an officer of the registry at the time of registering the memorial. A certificate must be endorsed by an officer of the registry on the instrument, mentioning the day on which the memorial is registered, and expressing in what book and under what number the same is registered, and the certificate must be signed by an officer of the registry, and is to be taken and allowed as evidence of the registration in all courts of record whatsoever.

Memorials, how to be registered.

Every memorial must be numbered, and the day of the month and the year when every memorial is registered must be entered in the margin thereof, and the registrar is to file every such memorial, in order of time, as the same are brought to the registry, and register the said memorials in the same order that they respectively come to his hands.

What a sufficient memorial, when more than one writing.

Where there are more writings than one for making and perfecting any conveyance or security which name, mention, or anyways affect or concern the same lands or hereditaments, it is a sufficient memorial and register thereof if all the said lands and hereditaments, and the parishes wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings made for the perfecting of such conveyance or security, and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering the same.

Errors may be rectified.

Every memorial is to be compared by an officer of the registry with the instrument to which it relates; and any clerical, trifling, or obvious errors may be corrected by him. But if any error is found which appears to the officer unsuitable for such correction, its nature must be notified to the person who has left the memorial in the office, and (unless he satisfies the registrar that it is sufficient) the memorial may be returned and the registration be cancelled, the fee paid being retained, but no fee charged on a substituted memorial.

Forms of memorials are prescribed by the Rules, and are obtainable at the Office of Land Registry.

Stamp.

A memorial to be registered pursuant to any Act for the time being in force relating to the public registering of deeds in England or Ireland is liable to a stamp duty of two shillings and sixpence, unless the instrument to be registered is chargeable with a less duty, in which case the stamp on the memorial will be the same as that on the instrument. (Stamp Act, 1891, Schedule.)

No. I.

MEMORIAL *of a* DEED *relating to* LAND *in* MIDDLESEX. OF DEED TO BE REGISTERED.

Land Registry. Middlesex Deeds Acts.

(Land Registry Stamp.) MEMORIAL OF A DEED. (Inland Revenue Stamp, 2*s.* 6*d.*)

PARTICULARS FOR THE INDEX.

Grantor's Surname.	Grantor's Christian Name.	Parish.
Smith	John	Hounslow.

Date of deed—1st January, 1892.

Parties—John Smith, of the one part;
Robert Jones, of the other part.

Description of lands—
ALL that, &c. (*as described in deed*).

Witnesses to execution of deed—
A. B. of, &c., witness to execution by John Smith.
C. D. of, &c., witness to execution by Robert Jones.

Signature of grantor or grantee—John Smith [*or* Robert Jones].

Signature of witness to signing of memorial—E. F.

Address and description—

N.B.—Instrument to be delivered to ——.

No. II.

OF ENDORSED OR ANNEXED DEED.

MEMORIAL *of an* ENDORSED *or* ANNEXED DEED (*a*) *relating to* LAND *in* MIDDLESEX.

(*Commencement and Particulars for Index as in No. I.*)

Date—1st July, 1892.

Endorsed on [*or* annexed to] a deed dated, &c., and made, &c. (*date and parties*), registered 1891 B. No. —— (*or if the prior deed is not registered*) affecting all that, &c. (*describing parcels verbatim as in the prior deed*).

Parties—1. The within- [*or* above-] named John Smith.
2. Robert Jones.

Description of lands—

ALL the hereditaments comprised in the within- [*or* above-] written indenture (*or as the case may be*).

(*Remainder of form as in No. I.*)

No. III.

OF LANDS DESCRIBED BY REFERENCE TO RECITAL.

MEMORIAL *of a* DEED *affecting* LAND *in* MIDDLESEX *where* PARCELS *are described by reference to a* RECITAL (*a*).

(*Commencement and Particulars for Index, and date and parties, as in No. I.*)

Description of lands—

The hereditaments comprised in the therein recited indenture of lease. This is an indenture dated the —— day of ——, 18—, and made between, &c. (*parties*), affecting ALL, &c. (*copy description from lease*).

(*Remainder of form as in No. I.*)

(*a*) The regulation of April 19, 1892, provides that where the description of land in an endorsed or annexed deed is made by reference to that contained in the prior deed, or in any case to a recital, the description contained in such prior deed or recital shall also be set out in the memorial, except that in the case of an endorsed or annexed deed, where a memorial of the prior deed has been registered, a reference to the year, book, and number of its registration shall be sufficient without setting out the full description contained in the deed.

No. IV.

MEMORIAL *of a* SUPPLEMENTAL DEED *relating to* LAND *in* MIDDLESEX. OF A SUPPLEMENTAL DEED.

(*Comencement and Particulars for Index as in No. I.*)

Date—1st July, 1892.

Supplemental to an indenture dated, &c., and made, &c., affecting "lands and hereditaments situate in the parish of ——, in the county of ——" (*verbatim as in supplemental deed itself*) (*a*).

Parties—(*As in No. I.*).

Description of lands—

ALL the hereditaments comprised in the principal indenture (*or otherwise as in deed*) (*a*).

(*Remainder of form as in No. I.*)

No. V.

MEMORIAL *of a* WILL *relating to* LAND *in* MIDDLESEX. OF A WILL.

MEMORIAL of a Will [and Codicil].

(*Commencement and Particulars for Index as in Form No. I., substituting "testator" for "grantor."*)

Date of will—1st February, 1890.

Testator—John Smith.

Description of land (*b*)—

Witnesses to execution of will—

Date of Codicil—

Description of lands (*if different*)—

Witnesses to execution of codicil—

Signature of a devisee—

Address and description—

(*Witness, &c., and N.B as in Form No. I.*)

(*a*) In the case of a supplemental deed, no further description of the land can be required than such as appears in the supplemental deed itself.

(*b*) This will be as in the will. No further description should be given, however vague and general that in the will may be, *e. g.*, "all the testator's real estate."

No. VI.

OF CONVEYANCE OF LAND IN YORKSHIRE.

MEMORIAL *of* DEED *of* CONVEYANCE *of* LAND *in* YORKSHIRE (*a*).

Volume ——. Page ——. No. ——.

Riding of Yorkshire. Registry of Deeds.

MEMORIAL of a deed of Conveyance for Registration.

Date—1st January, 1892.

Parties—John Smith, of the one part;
Robert Jones, of the other part.

Description of lands—
ALL that, &c. (*as in deed*).

Witnesses—
A. B. of, &c., witness to the execution by John Smith.
C. D. of, &c., witness to the execution by Robert Jones.

(Signed) John Smith. (L.S.)
Witness—X. Y.

(*a*) Memorials of assurances and wills relating to land in Yorkshire are subject to the following (among other) regulations:—

In the case of a deed the memorial must be under the hand and seal of some or one of the parties thereto, or some or one of their or his heirs, executors, administrators, guardians, or trustees, and must be attested by one or more witnesses, one of whom at least must have been a witness to the execution of the deed, and must contain (a) the date of the deed; (b) the name and description of the residence and occupation of all the parties to the deed, so far as set out therein; (c) the names and descriptions of the residences and occupations of all the witnesses to the execution of the deed, so far as appear therein; (d) a description of all the lands affected by the deed within the riding, and the names of all the parishes wherein the same are situate, in such manner as the same are expressed or mentioned in the deed, or to the same effect; (e) the name and description of the residence and occupation of the person on whose behalf the memorial is to be registered. (Yorkshire Registries Act, 1884, s. 6 (1).) In the case of a will, the memorial must be under the hand and seal of one of the trustees or executors of the said will, or of some or one or more persons claiming an interest thereunder in some of the lands affected thereby within the riding, and must be attested by one or more witnesses, and must contain (a) the date of the will; (b) the date of the death of the testator; (c) the name and description of the residence and occupation of the testator, so far as set out in the will; (d) the names and descriptions of the residences and occupations of all the witnesses to such will, so far as appears therein; (e) a description of all the lands affected by the will within the riding, and the names of all the parishes wherein the same are situate, so far and in such manner as the same are expressed or mentioned in the will, or to the same effect; (f) the name and descrip-

No. VII.

MEMORIAL *of* WILL *relating to* LANDS *in* YORKSHIRE. OF WILL.

Volume ——. Page ——. No. ——.

—— *Riding of Yorkshire. Registry of Deeds.*

MEMORIAL of a Will for Registration.

Date of will—1st January, 1892.
Date of death—1st December, 1892.
Testator—John Smith, of, &c., Gentleman.
Description of lands—

ALL the real estate of the testator (*or whatever other description of the land devised is contained in the will*).

Witnesses—A. B. of, &c., farmer;
C. D. of, &c., spinster.

(Signed) E. F., of, &c. (*one of the trustees or executors of the will, or one of the persons claiming an interest in the lands thereunder*). (L.S.)

Witness—X. Y.

(*Other forms will be found in the Schedule to the Land Registry (Middlesex Deeds) Rules*, 1892, *and in the Schedule to the North Riding of Yorkshire Registry Rules*, 1885.)

tion of the residence and occupation of the person on whose behalf the memorial is to be registered. (Sect. 6 (2).)

Memorials of orders of court, &c.

Regulations are also prescribed for the registration of memorials of orders of a court, or certificates of appointments of trustees in bankruptcy, private Acts of Parliament, awards and orders of the Land Commissioners (now the Board of Agriculture), and memoranda of liens or charges. (Sect. 6, sub-ss. 3—6, sect. 7.)

Production of original deed, &c. to registrar.

No deed or will can be registered unless the original or one of the originals of the deed, or the probate of the will, be produced to the registrar at the time of registration. (Sect. 8.)

Certificate of registration.

After the registration of any deed or will, a certificate of such registration is directed to be endorsed on the deed or will or probate, which certificate is receivable in evidence. (Sect. 9.)

Rules have been made under the Act for the several ridings containing further regulations, and prescribing forms to be used.

REGISTRATION OF TITLE

AND

INSTRUMENTS RELATING TO REGISTERED LAND.

Reasons for this dissertation and the following precedents.

A VOLUNTARY (*a*) system of registration of title to land has been in operation since 1862; and although the number of registered estates still bears but a small proportion to the total quantity of land in the kingdom, it increases every year, and a solicitor may at any time find himself called on to advise a client who has already acquired, or is contemplating the acquisition by purchase of, registered land. This being so, a short explanation of the system of registration and of the practice thereunder, together with a few precedents of instruments relating to registered land, will be found useful.

Registered land under Act of 1862 and Act of 1875 respectively.

Registered land consists of (1) land registered under the Land Registry Act, 1862, and still remaining subject to the provisions of that Act, and (2) land registered under the Land Transfer Act, 1875. The effect and incidents of registration under the two Acts are somewhat different.

As to land registered under the Act of 1862.

Mode of registration under Act of 1862.

Under the Act of 1862, registration might be either with or without an indefeasible title. Registration with an indefeasible title was completed in the manner following: first, a description of the land was to be entered in a book, called "The Register of Estates with an Indefeasible Title;" secondly, an exact record

Under small Holdings Act, registration of title obligatory.

(*a*) By the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), s. 10, a County Council purchasing land for the purposes thereof are required to apply for registration of their title as absolute under the Act of 1875. With this exception, the existing system of registration of title is voluntary.

of the existing estates, powers, and interests in the land, and the names and descriptions of the persons or classes of persons entitled thereto, were to be entered in a book called "The Record of Title;" and thirdly, an account of all the charges and incumbrances (if any) affecting the land was to be entered in a book called "The Register of Mortgages and Incumbrances."

Effect of registration with an indefeasible title.

The effect of registration with an indefeasible title is thus defined in sect. 20: "Subject to any exceptions, qualifications, or conditions mentioned in the record of title, and to any rights or interests thereby reserved, and to any registered charges or incumbrances, and to such charges and interests (if any) as are herein declared not to be incumbrances (*a*), the persons originally and from time to time named and described in such record of title shall, for the purposes of any sale, mortgage, or contract for valuable consideration by such persons respectively, be and be deemed to be, as from the date of registering such record by the registrar, or from such time as shall be fixed by him therein, absolutely and indefeasibly possessed of and entitled to such estates, rights, and interests as shall be defined and expressed in such record."

Registration without an indefeasible title.

Registration without an indefeasible title is without prejudice to any estate, right, or interest created or existing at or before the date of such registration (*b*).

Mode of disposition of registered land.

Land registered under the Act of 1862 may be conveyed, charged, settled, dealt with, or affected in any of the following modes, viz., (1) by a statutory disposition in any of the forms described in the Act; (2) by endorsement on the land certificate; (3) by deposit of the land certificate; (4) by any deed, will, judgment, decree, or instrument by which such land, if not registered, might, according to law, be conveyed, &c. But every such deed, &c., must be registered in the prescribed mode (*c*).

Land certificate, transmissions, restrictions, cautions, &c.

The Act further provides for the delivery to every registered proprietor who requires it of a land certi-

(*a*) These are similar to those specified in the Act of 1875.

(*b*) Sect. 25.

(*c*) Sects. 63—67.

ficate containing copies of the entries in the several books (*d*).

It also provides for the registering of transmissions and devolutions of land (*e*), and for the protection of unregistered interests by restrictions (*f*), or cautions (*g*).

Land may be removed from 1862 registry and transferred to new registry.

Land registered under the Act of 1862 may be removed altogether from the register (*h*), or may be transferred to the new registry, in which case it becomes subject to the provisions of the Act of 1875. If not so removed or transferred, it remains subject to the provisions of the Act of 1862.

No new registration to be made under Act of 1862.

Since 1875 no land can be added to the register under the Act of 1862.

Rules and orders under Act of 1862.

The practice under the Act of 1862 is regulated by General Rules and Orders, dated the 1st October, 1862, the 6th July, 1864, the 27th July, 1866, the 1st January, 1876, the 16th January, 1889, and the 12th October, 1891, and various forms are prescribed in the schedules to the Act and Orders.

It is stated that in November, 1891, there remained registered under the Act of 1862 between 3,000 and 4,000 separate estates (*i*).

As to land registered under the Act of 1875.

Land Transfer Act, 1875.

The following is a summary of the principal provisions of the Land Transfer Act, 1875:—

Who may get registered.

Any person entitled to, or capable of disposing of for his own benefit, an estate in fee simple in land, or any person who has contracted to buy such an estate, may get himself, or his nominee or nominees not exceeding the prescribed number (which is limited by

(*d*) Sects. 68—73.
(*e*) Sects. 78—83.
(*f*) Sects. 93—95.
(*g*) Sects. 96—100.
(*h*) Sect. 34.
(*i*) See the preface to "The Practice of Land Registry under the Transfer of Land Act, 1862, by C. F. Brickdale, assisting-barrister to the Land Registry." It is apprehended that many of these "separate estates" are the result of sales in lots of what at the time of first registration was one estate, and are therefore very small.

the Rules to four) registered as a proprietor or proprietors, either with an absolute title or with a possessory title only, but, in case of land contracted to be bought, the vendor must consent to the application (*k*).

Steps to be taken to obtain registration.

Where an absolute title is required, the title must be approved by the registrar. Where a possessory title only is required, the applicant must give such evidence of title and serve such notices as may be prescribed (*l*).

Effect of first registration with absolute title.

A first registration as proprietor with an absolute title vests in him the fee simple, subject to registered incumbrances (if any), to such liabilities, rights, and interests as are in the Act declared not to be incumbrances, and subject also, as between himself and any persons claiming under him, to any unregistered estates, rights, or equities to which such persons may be entitled (*m*).

With possessory title.

Registration with a possessory title does not affect or prejudice any adverse right subsisting or capable of arising at the time of registration, but with this exception it has the same effect as registration with an absolute title (*n*).

With qualified title.

The registrar may certify a title as established for a limited period, or subject to reservations, and this is called a qualified title (*o*).

Land certificate.

A land certificate is to be delivered to the registered proprietor, if he requires it (*p*).

Registration of leaseholds.

The Act contains provisions for the registration of title to leasehold land, either with or without a declaration of the lessor's title similar to those applicable to freehold land (*q*).

What liabilities are not to be deemed incumbrances.

All registered land, unless the contrary is expressed on the register, will be deemed to be subject to such of the following liabilities as may be subsisting in reference thereto, and such liabilities, rights, and interests are not to be deemed incumbrances for the

(*k*) Sect. 5.
(*l*) Sect. 6.
(*m*) Sect. 7.
(*n*) Sect. 8.
(*o*) Sect. 9.
(*p*) Sect. 10.
(*q*) Sects. 11—16.

purposes of the Act, viz., (1) Liability to repair highways by reason of tenure, quit rents, crown debts, heriots, and other rents and charges having their origin in tenure; (2) Succession duty, land tax, tithe rentcharge; (3) Rights of common, rights of sheepwalk, rights of way, watercourses, rights of water, and other easements; (4) Rights to mines and minerals; (5) Rights of entry and other rights incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals; (6) Rights of fishing and sporting, seignorial and manorial rights of all descriptions, and franchises, exerciseable over the registered land; (7) Leases and agreements for leases, and other tenancies for any term not exceeding twenty-one years, or for any less estate where there is occupation under such tenancies. Where it is proved to the satisfaction of the registrar that the land is exempt from land tax or tithe rentcharge, he may notify that fact on the register. He may also notify on the register the fact that no succession duty is owing. Where it is proved to the satisfaction of the registrar that the right to mines and minerals is vested in the proprietor of the land, he may register such proprietor as proprietor of the mines and minerals also. Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is severed from the land, he may register the person entitled to the mines and minerals as proprietor thereof (*r*).

Exceptions from land tax, &c. may be notified in register.

Separate ownership of mines may be registered.

Charge of registered land.

A registered proprietor of freehold or leasehold land may charge such land with the payment at an appointed time of any principal sum of money, either with or without interest, and with or without a power of sale. The charge is completed by entering on the register the chargee as the proprietor of the charge, and the particulars of the charge, and the power of sale (if any). A charge certificate is to be delivered to the proprietor of the charge if he requires it (*s*).

(*r*) Sect. 18.

(*s*) Sect. 22.

A registered charge implies the usual covenant for payment of principal and interest, and, in the case of leaseholds, a covenant to pay the rent and observe the covenants in the lease (*t*). What is implied in a registered charge.

The registered proprietor of a charge may take possession, and may enforce a foreclosure or sale of the land as in the case of a mortgage; and where he has a power of sale, he may sell as if he were the registered proprietor of the land. When a charge is satisfied, its cessation is to be notified by an entry on the register (*u*). Remedies under it. Cessation of charge to be notified.

Every registered proprietor of freehold or leasehold land may transfer it in the prescribed manner, and the transfer is completed by the registrar entering on the register the transferee as proprietor of the land transferred (*x*). Transfer of land.

A transfer for valuable consideration of freehold land registered with an absolute title confers on the transferee an estate in fee simple in the land transferred, subject to the incumbrances, if any, entered on the register, and subject also, unless the contrary is expressed on the register, to such liabilities, rights and interests as are by the Act declared not to be incumbrances, but free from all other estates and interests whatsoever. A transfer for valuable consideration of freehold land registered with a qualified title has the same effect as in the case of land registered with an absolute title, save that it does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. A transfer for valuable consideration of freehold land registered with a possessory title does not prejudice or affect the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor, but with this saving it has the same effect as a transfer of land registered with an absolute title. A transfer of freehold land made without valuable consideration is subject to any unregistered Effect of transfer for valuable consideration where title is absolute; where qualified, or possessory. Effect of voluntary transfer.

(*t*) Sect. 23. (*u*) Sects. 25—28. (*x*) Sect. 29.

estates, rights, or equities subject to which the transferor held the same (*x*).

Effect of transfer of leasehold registered land.

The operation and incidents of a transfer by the registered proprietor of leasehold land are similar to those above mentioned with regard to freehold land registered with an absolute title, except that if the leasehold land is registered without any declaration of the lessor's title, the transfer does not affect the enforcement of any estate, right, or interest affecting or in derogation of the lessor's title. A transfer of leasehold land implies covenants by the transferor that the rent and covenants have been paid and observed, and by the transferee to pay and perform them in future (*y*).

Transfer of registered charge.

The registered proprietor of any charge may transfer it in the prescribed manner. The transfer is completed by the registrar entering on the register the transferee as proprietor of the charge transferred. The registrar is to deliver to the transferee, if required, a fresh certificate of charge (*z*).

Transmission of land.

The Act contains various provisions prescribing the entries to be made on the register on the transmission of registered land or of registered charges on land by death or bankruptcy, or the marriage of a female proprietor (*a*). In particular, it is provided that any person registered in the place of a deceased or bankrupt proprietor shall hold the land or charge upon the trusts and for the purposes to which the same is applicable by law.

Unregistered dispositions of interests in registered land.

Subject to the maintenance of the rights of the registered proprietor, any person, whether the registered proprietor or not, having a sufficient interest in registered land, may by unregistered dispositions create estates, rights, interests, and equities in the same manner as if the land were not registered, and any person entitled to an unregistered estate or interest may protect the same by notices, cautions, inhibitions, restrictions, &c. (*b*).

(*x*) Sects. 30—33.
(*y*) Sects. 34—39.
(*z*) Sect. 40.
(*a*) Sects. 41—48.
(*b*) Sect. 49.

Notice of leases may be entered in register.

Any person interested under a lease, or agreement for a lease, made subsequently to the last transfer of the land on the register, also any person entitled to an estate or dower, or by curtesy, may have a notice of it entered on the register (*c*).

Cautions may be lodged by persons interested under unregistered dispositions.

Any person interested under any unregistered instrument, or interested as a judgment creditor, or otherwise in any registered land or charge, may lodge a caution with the registrar to the effect that no dealing with the land or charge be had on the part of the registered proprietor until notice has been served on the cautioner (*d*).

Restrictions may be placed on transfer by registered owner.

Where the registered proprietor of land is desirous for his own sake, or at the request of some person interested in the land, to place restrictions on transferring or charging such land, he may apply to the registrar to make an entry in the register that no transfer or charge shall be made unless the following things or some or one of them are done: (namely) unless notice of an application for a transfer or for the creation of a charge is transmitted by post to such address as he shall specify to the registrar, or unless the consent of some specified person be given, or unless such other matter or thing is done as may be required by the applicant and approved by the registrar (*e*).

Trustees and others may authorize purchaser to apply for registration.

Any trustee, mortgagee, or other person having a power of selling land may authorize a purchaser to make an application to be registered as first proprietor, and may consent to the performance of the contract being conditional on his being so registered, and may himself apply for registration and charge the expenses to the trust (*f*).

Concurrent or successive ownership.

Any two or more persons entitled concurrently or successively to land may be registered as joint proprietors, in the same manner and with the same incidents in and with which it is by the Act declared that any individual proprietor may be registered (*g*).

(*c*) Sects. 50—52.
(*d*) Sects. 53—57.
(*e*) Sects. 58, 59. These sections have enabled the registrar to adapt the practice under the Act to the subsequent Settled Land Acts.
(*f*) Sect. 68.
(*g*) Sect. 69.

Production of deeds, &c. to registrar.

All instruments and facts affecting the title must be disclosed to the registrar, and persons holding deeds liable to be produced can be required to produce them, and the registrar may stamp or mark deeds relating to registered land so as to give notice to any purchaser or other person dealing with the land of the fact of the registration (*h*).

Registration of title to incorporeal hereditaments.

The registrar may register the proprietor of any advowson rent, tithes impropriate, or other incorporeal hereditaments of freehold tenure enjoyed in gross, also the proprietor of any mines or minerals, where the same have been severed from the land. He may also register any fee farm grant, with the particulars of the rent, services, conditions, &c. (*i*).

No notice to be taken of trusts.

No notice of any trust (express, implied, or constructive) can be entered on the register, and no person can be registered as the proprietor of an undivided share in land (*k*).

Entry to prevent dealings when number of co-proprietors reduced below a certain number.

Upon the registry of two or more persons as proprietors of the same land an entry may with their consent be made, to the effect that when the number of such proprietors is reduced below a certain specified number no registered disposition shall be made except under the order of the Court (*l*).

Husband and wife co-proprietors.

On any dealing with land registered in the names of husband and wife as co-proprietors, the wife must be examined in the prescribed manner (*m*).

Boundaries.

The description of registered land is not conclusive as to the boundaries thereof (*n*).

Stamps.

The registrar must see that all stamp duties have been paid (*o*).

Restrictive conditions.

Land may be registered or transferred with conditions restrictive of building or user (*p*).

Inspection of register.

Subject to such regulations and exceptions as may be fixed by general rules, any registered proprietor of any land or charge, and any person authorized by any such proprietor, or by an order of the Court, or by

(*h*) Sects. 70—72.
(*i*) Sect. 82.
(*k*) Sect. 83, sub-ss. 1, 3.
(*l*) *Ibid.*, sub-s. 3.
(*m*) *Ibid.*, sub-s. 4.
(*n*) *Ibid.*, sub-s. 6.
(*o*) Sect. 83, sub-s. 7.
(*p*) Sect. 84.

general rule, but no other person, may inspect and make copies of and extracts from any register or document in the custody of the registrar (*q*).

Practice under Act regulated by Rules of 1875 and 1889.

The practice under the Act of 1875 is regulated by Rules and Orders, dated the 24th December, 1875, and the 1st January, 1889. These rules provide that where a possessory title only is required, a statutory declaration must be made by the applicant accompanied by a map and a description of the land, and the last conveyance or document of title (if any) in his possession or power must be left at the office to be stamped with notice of the registration.

Steps to be taken on application for registration with possessory title.

Steps to be taken on application for registration with absolute title.

Abstract.

Where an absolute title is required, the applicant must establish his title to the satisfaction of the registrar, and for this purpose he will have to deliver an abstract in the usual form, and any opinion of counsel, or other papers relating to the title which he may have, to produce his deeds to be examined with the abstract, and to submit to the usual searches. The title may be laid before one of the conveyancing counsel of the Court (*r*), or of an examiner of title; and the cost of examination, of proving the title, of all searches and inquiries (including the fees of the conveyancing counsel) are borne by the applicant.

Advertisements.

Notices.

Expenses.

Advertisements (also at his expense) are inserted in the newspapers, and the registration is not, as a rule, completed until at least three months have expired from the date of the first application. Notices, moreover, have to be served on tenants, incumbrancers, and others. And any objections made to the proposed registration are to be heard and determined by the registrar, subject to an appeal to the Court. In addition to the expense above referred to, the applicant must pay a fee for the entry of land on the register according to a table of fees fixed by the Fee Order of 16th January, 1889, which applies also to the registration of transfers and charges. If the applicant employs a solicitor he must pay him ac-

(*q*) Sect. 104.

(*r*) It is stated in the office that up to the present time the registrar has examined all the titles.

cording to a scale of fees prescribed by the Rules of 1889, which is, for the first registration with an absolute title, practically the same as that prescribed under the Solicitors' Remuneration Act for sales.

Forms.

The Rules prescribe forms of application for registration and also forms of instruments of charge and transfer of charge, and of transfers of land, forms of cautions, and other forms for use under the Act.

Increase of application to register.

It is stated in a paper lately issued by the office of Land Registry that the number of estates registered under the Act of 1875 is rapidly increasing, particularly since the publication of the Rules of 1889.

Registration, how it affects practice of conveyancing.

We now proceed to consider how registration of title under the Acts of 1862 and 1875 respectively, affects the practice of conveyancing as regards the sale, mortgage, or other disposition of registered land under the following heads:—(1) the contract for sale; (2) abstracts and searches; (3) the mode of conveyance; (4) mortgages and other dispositions.

The contract for sale.

Registration with absolute or indefeasible title, conclusive except as to certain liabilities specified in Act.

Where the title to land has been registered as indefeasible under the Act of 1862, or as absolute under the Act of 1875, the registration is conclusive evidence of title except as regards those liabilities, rights, or interests which are declared by the Acts not to be incumbrances (*s*).

Inquiries as to existence of these liabilities to be guarded against by special conditions.

As all these liabilities, except land tax and tithe rent-charge, are incumbrances as between vendor and purchaser, and constitute, if they exist, a defect of title, it is proper to guard against any objection or inquiry as to their existence by a special condition.

Title to be shown where registration is with possessory or qualified title,

Where the registration is under the Act of 1875 with a possessory title only or with a qualified title, *i. e.*, without prejudice to estates arising before the date of registration, or before a certain specified date, the purchaser will be entitled to carry the investi-

(*s*) Act of 1862, s. 27; Act of 1875, s. 18.

gation back for forty years according to the ordinary rule, and to preclude him from so doing a special condition will be necessary.

If the registration is under the Act of 1862, without an indefeasible title, a condition should be inserted to preclude inquiry into matters excepted from the effect of registration.

or without an indefeasible title.

The abstract and searches.

If the title to the land has been registered as indefeasible under the Land Registry Act, 1862, or as absolute under the Land Transfer Act, 1875, the abstract will consist of a copy of the land certificate (or if there is no land certificate, or the land certificate is not completed up to date, copies of the entries on the register) and copies or abstracts of any documents referred to but not set out at length in the register.

What the abstract should consist of in the case.

If the property is subject to any liabilities, rights, or interests declared not to be incumbrances by sect. 27 of the Act of 1862, or sect. 18 of the Act of 1875, *e. g.*, leases or tenancies for not more than twenty-one years where there is occupation under the tenancy, easements, or rights to minerals, the instrument (if any) creating them should be abstracted.

Instruments creating liabilities which are not incumbrances.

Where the registration is with a possessory title only, or a qualified title, the abstract must (in the absence of any stipulation in the contract to the contrary) carry the title back forty years, and comprise all the documents affecting the land up to the date of registration or up to the end of the period excepted from the effect of registration.

If registration is with a possessory title only, abstract must be carried back forty years.

In the case of registered leaseholds, the abstract will comprise the lease and the entries on the register.

Registered leaseholds.

The purchaser should compare the abstract with the entries in the register, and as regards registered documents with the filed copies registered at the office.

Purchaser should compare abstract with entries in register.

It sometimes happens, particularly under the Act of 1862, that registered land has been dealt with by way of sale and otherwise by unregistered documents, so

What course to be taken if registration under Act of 1862 is not kept up.

that the title of the present vendor does not appear on the register. In such a case the purchaser should require the vendor to have his title completed by proper entries, and this must be done at the vendor's expense.

No searches except in the Land Registry necessary.

No searches need be made in the Middlesex or Yorkshire Registries, or in the Central Office of the Supreme Court, or in the registers kept under the Land Charges Registration and Searches Act, 1888, except in the case of qualified or possessory titles, and then only to the extent not covered by the registration.

The conveyance.

Form of conveyance to be used.

The transfer of land registered under the Act of 1862 should, as a general rule, be made in accordance with Form 1 in the Schedule to that Act, but the use of this form is not obligatory. The signature by every person named on the register requires verification, as in Form 4 to the Rules of 1864. Where the land is registered under the Act of 1875, Form No. 8 in the second schedule to the Rules of 1889 must be used, and the signature of the transferor must be verified in accordance with Forms Nos. 9 and 10. These forms are printed and supplied by the Registry.

Covenants for title, when to be given.

If the vendor has less than an absolute or indefeasible title, he should enter into covenants for title. Where the land is registered under the Act of 1862 the words "as beneficial owner" may be added in the deed of transfer; but if it is registered under the Act of 1875, the prescribed instrument of transfer not being under seal the statutory covenants would not be implied by the use of these words, and a separate deed is necessary.

Separate deed necessary where purchasers are to take as tenants in common, or as partners, or where trusts are to be created.

If there are several purchasers, and the intention is that they shall be tenants in common or shall hold the land as partnership property, or shall take successive estates, or if it is wished to impose any trusts on the grantee, the statutory instrument of transfer must, where the land is registered under the Act of 1875, be

accompanied by a separate deed or instrument to carry out these objects, and the interests thereby created may (if thought necessary) be protected by cautions or restrictions entered on the register. If the land is registered under the Act of 1862, a separate deed is not necessary, though in the case of trusts it would in most cases be thought desirable to keep notice of them off the register.

As to purchase of registered land by trustees of a real property settlement.

A purchase of registered land by trustees of a real property settlement creates some difficulty. See precedent No. XII. *infra*, and the note to it.

Mortgages and other dispositions.

Proper form of mortgage of land registered under Act of 1862,

As regards land registered under the Act of 1862, the form given in the schedule to the Act is defective, and as its use is not obligatory, it will be better to adopt the form of "statutory mortgage" in the third schedule to the Conveyancing Act, 1881, or the ordinary form of mortgage which would be applicable to the land if it had not been registered.

and under Act of 1875.

As regards land registered under the Act of 1875, the mortgage must be according to the Form No. 5 in the second schedule to the Land Registry Rules, 1889. If it is wished to make any special stipulations other than those in Form No. 7 in the same schedule, there must be a separate deed to accompany the statutory charge.

Cessation of charge.

On the payment off of a charge, an application should be made to the registrar to notify the cessation of it on the register, which is done by cancelling the original entry.

Equitable mortgage by deposit of Land Certificate.

An equitable mortgage may be made by a deposit of the Land Certificate. This should be accompanied by a caution or restriction under sect. 53 or sect. 58 of the Act of 1875.

Applications for registering notices of leases.

When a registered proprietor leases for more than twenty-one years, or grants a lease for a less term unaccompanied by actual occupation, the lessee should apply to the registrar to have a notice of it entered on the register under sects. 50 and 51 of the Act of 1875.

What dispositions must be by unregistered deed.

Any disposition by way of sale, mortgage, or otherwise of any unregistered interest in registered land, and also any disposition by a registered proprietor, not being a transfer or charge of the whole fee simple or the whole leasehold interest, must be by an unregistered deed just as if the land were not registered.

Settlement of registered land.

If a registered proprietor of land under the Act of 1875 wishes to make a strict settlement, he must convey it to the uses intended by an ordinary deed, just as if the land were not registered; and if the settlor is not made the first tenant for life, the land should be transferred to the first tenant for life by an instrument of transfer in the prescribed form, so as to enable him to be registered as proprietor. An application should be made to the registrar under sect. 58 of the Act requesting that an entry be made in the register prohibiting any transfer or charge by the registered proprietor unless the purchase or mortgage money be paid to the persons therein named, who will be the trustees of the settlement.

No. I.

CONDITIONS *of* SALE *of* FREEHOLD *land, where the* TITLE *is* REGISTERED *as* ABSOLUTE *under the Act of* 1875, *or as* INDEFEASIBLE *under the Act of* 1862.

CONDITIONS OF SALE OF FREEHOLD REGISTERED LAND.

1 to 4. (*As in conditions of sale, No. I.*, pp. 49, 50, *or No. III.*, pp. 55, 56, *supra*).

Purchaser to assume the non-existence of liabilities which are not incumbrances under the Act on having a statutory declaration.

5. THE vendor is the registered proprietor with an absolute title under the Land Transfer Act, 1875 [*or* with an indefeasible title under the Land Registry Act, 1862]. The purchaser shall assume that the property is free from all liabilities, rights, or interests [*or* charges or interests] by sect. 18 [*or* sect. 27] of the said Act declared not to be incumbrances for the purposes of the said Act, except as appears in the particulars, upon having a statutory declaration from the vendor or his agent that he is unaware of the existence of any such liabilities, rights, or interests [*or* charges or interests] except as aforesaid, and that he believes the property to be free therefrom, such declaration to be prepared by and at the expense of the purchaser.

Vendor to execute instrument of transfer.

6. UPON payment of the residue of the purchase-money at the time and place aforesaid the vendor will execute to the purchaser [of each lot] an instrument of transfer in the prescribed form, to be prepared by and at the expense of the purchaser.

7. IF, &c. [*Power to vendor to resell in case of purchaser's default*, p. 52, *supra*].

MEMORANDUM.—At the sale, &c. (*Memorandum to be signed at end of conditions, supra*, p. 52).

No. II.

OF FREEHOLD LAND, WITH POSSESSORY TITLE.

CONDITIONS *of* SALE *of* FREEHOLD *land where the* VENDOR *has a* POSSESSORY TITLE *only under the* LAND TRANSFER ACT, 1875.

1 to 4 (*as in Precedent No. I.*).

No evidence to be required of title prior to registration.

5. THE vendor is the registered proprietor with a possessory title only under the Land Transfer Act, 1875, the date of first registration being the —— day of ——, 18—. [On the registration a statutory declaration as to title was made by the proprietor and is filed in the registry.] No evidence of title prior to the registration shall be required, and the purchaser shall assume that no estate, right, or interest adverse to or in derogation of the title of the first registered proprietor [except as stated in the said declaration] is now subsisting or capable of arising. The purchaser shall also assume that the property is free from, &c. (*as in Precedent No. I., supra*, p. 689).

(*If the earlier title is to be shown.*)

What earlier title to be shown.

5A. THE vendor is the registered proprietor with a possessory title only, under the Land Transfer Act, 1875, the date of first registration being the —— day of ——, 18—. The title shall commence with an indenture of conveyance, dated, &c. (*add any other special conditions necessary*). The purchaser shall assume that the property is free, &c. (*as in Precedent No. I., supra*, p. 689).

On completion vendor to execute deed of conveyance and instrument of transfer.

6. UPON payment of the residue of the purchase-money at the time and place aforesaid, the vendor shall execute a deed of conveyance containing the usual words implying covenants for title, and also an instrument of transfer in the prescribed form, such deed of conveyance and instrument of transfer to be prepared by and at the expense of the purchaser (*a*).

7. (*Power to vendor to resell on purchaser's default*, p. 52).

(*a*) The deed of conveyance will bear the *ad valorem* stamp, and the instrument of transfer will require no stamp.

No. III.

CONDITIONS *of* SALE *of* FREEHOLD LAND *where the* VENDOR *is registered with a* QUALIFIED TITLE.

OF FREEHOLD LAND WITH QUALIFIED TITLE.

1 to 4 (*As in precedent No. I.*).

In case of qualified title, the non-existence of adverse title to be assumed.

5. THE vendor is the registered proprietor with a qualified title under the Land Transfer Act, 1875, estates, rights, and interests arising before the —— day of —— 18—, being excepted from the effect of registration. No evidence of title prior to the —— day ——, 18—, shall be required, and the purchaser shall assume that no estate, right, or interest adverse to or in derogation of the registered title is now subsisting or capable of arising. The purchaser shall also assume that the property is free, &c. (*as in precedent No. I.* p. 689, *supra*).

(*Or the following.*)

In case of qualified title, statutory declaration of possession, &c. to be accepted as conclusive evidence of no adverse title.

5A. THE vendor is the registered proprietor with a qualified title under the Land Transfer Act, 1875, estates, rights, and interests arising before the —— day of ——, 18—, being excepted from the effect of the registration. The vendor will make a statutory declaration to the effect that he has been in possession or receipt of the rents and profits of the property since the date of the registration [*or* since the —— day of ——, 18—], and that during that time no adverse claim has been made thereto, and also that to the best of his knowledge, information, and belief, the property is free from all such liabilities, rights, or interests as are by the said Act declared not to be incumbrances except as appears in the particulars. The purchaser shall accept such declaration as conclusive evidence that no estate, right, or interest adverse to or in derogation of the registered title is now subsisting or capable of arising, and also of the freedom of the property from all such liabilities, rights, or interests as aforesaid.

6, 7. (*As in Precedent No. II.*).

No. IV.

OF LEASEHOLDS WITH REGISTERED TITLE.

CONDITIONS *of* SALE *of* LEASEHOLDS *where the* VENDOR *has a* REGISTERED TITLE *under the* LAND TRANSFER ACT, 1875.

1 to 3. (*The same as in Conditions of Sale No. II.*, p. 53.)

Last receipt of rent to be sufficient evidence of performance of covenants.

4. THE vendor is the registered proprietor under the Land Transfer Act, 1875, with [*or* without] a declaration of the lessor's title to grant the lease. The receipt for the last payment of rent which shall have become due under the lease shall be accepted by the purchaser as conclusive evidence that all the covenants and conditions contained in the lease, and to be performed by the lessee, have been performed up to the completion of the purchase. The nature of such covenants and conditions may be ascertained by an inspection of an office copy of the lease which will be produced at the time of sale. The purchaser shall assume that no such liabilities, rights, or interests as are by the said Act declared not to be incumbrances in the case of freehold registered land, affect the leasehold estate which is the subject of this sale, except as appears in the particulars.

5, 6. (*Same as* 6 *and* 7 *in Precedent No. I.*, p. 689.)

No. V.

OF REGISTERED LAND SUBJECT TO CONDITIONS AS TO BUILDING.

CONDITIONS *of* SALE *of* FREEHOLD REGISTERED LAND *in* LOTS *where the* SALE *of each* LOT *is made subject to* CONDITIONS *as to* BUILDING *and* USER.

1 to 5. (*As in one of the foregoing precedents.*)

That property is sold subject to building conditions.

6. THE several lots are sold subject to the following conditions (namely), (*here insert conditions agreed on. For a specimen of such conditions see Precedent No. VI. of Conditions of Sale*, p. 76, *supra*).

OF REGISTERED LAND SUBJECT TO CONDITIONS AS TO BUILDING.

7. (*Where all the conditions are restrictive* (*a*)). Upon payment by the purchaser of each lot of the residue of his purchase-money at the time and place aforesaid, the vendor shall execute to him an instrument of transfer in the prescribed form, to be prepared by and at the expense of the purchaser, and the purchaser shall concur with the vendor in making the necessary application to the registrar under sect. 84 of the said Act, requesting him to register the above conditions as annexed to the said lot.

Vendor to execute instrument of transfer, and application to be made to registrar to register conditions.

7A. (*Where the conditions as to building and user are partly constructive and partly restrictive* (*b*)). Upon payment by the purchaser of each lot of the residue of his purchase-money at the time and place aforesaid, the vendor shall execute to him a deed of conveyance of the said lot, and the purchaser shall, in and by the same deed, enter into covenants with the vendor embodying the above conditions so far as the same are applicable to the said lot. The vendor shall at the same time execute to the purchaser an instrument of transfer in the prescribed form, so as to enable him to be registered as proprietor of the said lot, and both parties shall concur in making the necessary application to the registrar under sect. 84 of the said Act, requesting him to register as annexed to the said lot such of the above conditions as are restrictive of building or user within the meaning of the said section. The deed of conveyance and instrument of transfer shall be prepared by and at the expense of the purchaser.

Vendor to execute deed of conveyance and instrument of transfer, and application to be made to registrar to register conditions.

8. (*Power to vendor to rescind in case of purchaser's default, supra*, p. 59).

MEMORANDUM, &c.

(*a*) Where all the conditions are restrictive of building or user within the meaning of sect. 84 of the Act of 1875, an entry on the register under that section is a sufficient protection to the vendor. But if the conditions or some of them require the purchaser to expend money in constructive works on the land, *e.g.*, to erect or repair buildings or fences, conditions of this kind cannot be annexed to the land under sect. 84. It is, therefore, necessary in that case to have a deed of conveyance containing covenants by the purchaser to do the things stipulated for, which covenants can be enforced against him personally, but will not run with the land.

(*b*) See last note.

No. VI.

FOR SALE OF REGISTERED LAND.

AGREEMENT *for the* SALE *of* FREEHOLD *or* LEASEHOLD LAND REGISTERED *under the* LAND REGISTRY ACT, 1862, *or the* LAND TRANSFER ACT, 1875.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part.

Parties.

Agreement to sell and purchase.

1. THE said A. B. (hereinafter called "the vendor") agrees to sell, and the said C. D. (hereinafter called "the purchaser") agrees to purchase for the sum of £—— the fee simple of the land shown in the map drawn in the margin hereof and described in the schedule hereto, being [part of] the land entered in the register kept at the Office of Land Registry, under No. ——, and registered with an absolute [*or* indefeasible, *or* possessory, *or* qualified] title.

(*If the property is leasehold.*)

THE said A. B. (hereinafter called "the vendor") agrees to sell, and the said C. D. (hereinafter called "the purchaser") agrees to purchase for the sum of £—— the leasehold land described in the schedule hereto, being the land entered in the register kept at the Office of Land Registry, under No. ——, and registered with [*or* without] a declaration of the lessor's title, and which land is held under an indenture of lease dated the —— day of ——, 18—, for the residue of a term of —— years commencing on the —— day of ——, 18—, at the yearly rent of £——, and subject to the lessee's covenants in the said indenture contained.

(*Conditions similar to Nos.* 5 *and* 6 *in Precedents No. I., No. II., or No. III., or to Nos.* 4 *and* 5 *in Precedent No. IV.*, supra, *as the case may require.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VII.

TRANSFER *of* LAND *to a* PURCHASER *under the* LAND REGISTRY ACT, 1862 (*a*).

TRANSFER UNDER ACT OF 1862.

Dated the —— day of ——, 18—.

I, A. B. of, &c. (*vendor*), in consideration of £—— paid to me, do hereby [as beneficial owner (*b*)] grant to C. D. of, &c. (*purchaser*), and his heirs, ALL the land comprised in title No. —— in the Land Registry [*or* ALL the land shown and coloured pink [*or* edged with red] on the plan drawn in the margin of these presents [*or* in the tracing annexed hereto] being part of the land comprised, &c. (*as above*)].

Signed and sealed by A. B.

Witness,

E. F. of, &c.

A solicitor of the Supreme Court of Judicature (*c*).

Declaration of attestation and identity to accompany the last Precedent.

No. of Title.

I, E. F., of, &c., solicitor, do solemnly and sincerely declare that I am well acquainted with A. B., the person named in the deed dated, &c., marked A., now produced to me, that I saw him sign, seal, and as his act and deed deliver the same deed [*or if the declarant was not the attesting witness*, that the name A. B. at the foot thereof is the handwriting of the said A. B.], and that the said A. B. is the same person as A. B. who is named in the register under the name above referred to.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act, 1835.

(*a*) Under the Act of 1862, it is not necessary that the above statutory form should be followed. A conveyance may be in the ordinary form.

(*b*) These words may be omitted if the registration is with an indefeasible title.

(*c*) It is not necessary, though convenient for the purpose of subsequent verification, that the attesting witness should be a solicitor.

No. VIII.

UNDER ACT OF 1875.

TRANSFER *of* LAND *to a* PURCHASER *under the* LAND TRANSFER ACT, 1875.

Land Transfer Act, 1875.

Office of Land Registry.

No. of Title——.

——, 18—. In consideration of £——, I, A. B. of, &c. (*vendor*), hereby transfer to C. D. of, &c. (*purchaser*) [*or* to C. D. of, &c., E. F. of, &c., G. H., of, &c., and I. K. of, &c. (*purchasers*)], ALL the land [shown on the accompanying map, signed by me and also by or on behalf of the said transferee, and (*if so*) more particularly described in the schedule to the accompanying folio, being part of the land] (*a*) comprised in the title above referred to.

(*Signature of proprietor, and of witness if any.*)

Verification of transferor's signature.

I am personally acquainted with the above-named A. B., and I certify that he now resides [*or* formerly resided] at (*registered address*), and that he is, to the best of my knowledge and belief, the same person as the A. B. who is named in the register under the title above referred to, and that I saw him this day sign [*or* that he attended before me this day, and acknowledged his signature to] the above document.

Dated the —— day of ——, 18—.

(*To be signed by a justice of the peace, a commissioner for oaths, practising solicitor, or banker, adding address and capacity, who should also initial the map, if any.*)

(*a*) The words in brackets will be omitted if the whole is transferred.

No. IX.

DEED *of* CONVEYANCE *and* INSTRUMENT *of* TRANSFER *of* REGISTERED LAND, *where the* REGISTRATION *is with a* POSSESSORY TITLE *only, and it is intended that the* VENDOR *shall be liable to the* STATUTORY COVENANT *for* TITLE (*a*). — OF REGISTERED LAND WITH POSSESSORY TITLE.

1. DEED OF CONVEYANCE.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B., being the registered proprietor with a possessory title under the Land Transfer Act, 1875, of the land intended to be hereby conveyed, has agreed to sell the same to the said C. D. for the sum of £——: AND WHEREAS it is intended that these presents shall be accompanied by an instrument of transfer in the prescribed form so as to enable the said C. D. to be registered as proprietor of the said land: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——, paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges): THE said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels as described on the register*): TO HOLD the same unto and to the use of the said C. D. in fee simple (*If any documents prior in date to the first registration are in the vendor's possession relating to other property, the usual acknowledgment of right*

Parties.

Recital of agreement to sell.

Of intended instrument of transfer.

Witnessing part.

Vendor conveys to purchaser in fee.

(*a*) When the registration is with a possessory title only, and the vendor is himself the first registered proprietor or derives title otherwise than through a purchaser for valuable consideration from the first registered proprietor, the purchaser is entitled to the usual covenants for title. As these cannot be inserted in, and will not be implied by force of the Conveyancing Act from, an instrument of transfer in the prescribed form, the transfer should be accompanied by an ordinary deed of conveyance in which the vendor conveys "as beneficial owner." The deed will have the proper *ad valorem* stamp, and the instrument of transfer requires no stamp.

OF REGISTERED LAND WITH POSSESSORY TITLE.

to production and undertaking for safe custody will be added, supra, p. 217).

In witness, &c.

2. Instrument of transfer.

(*See Precedent No. VIII., supra*, p. 696.)

No. X.

OF REGISTERED LAND SO AS TO CREATE TENANCY IN COMMON.

CONVEYANCE *and* Transfer *of* Registered Land *to* Purchasers *who have paid the* Purchase-money *in* Unequal Shares, *and are to be* Tenants *in* Common *in corresponding shares* (*a*).

1. Deed of conveyance.

THIS INDENTURE, made the —— day of ——, 18—,

Parties. Between A. B. of., &c. (*vendor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*purchasers*), of the other part:

Recite agreement for sale, Whereas the said A. B., being the registered proprietor with an absolute [*or* possessory] title under the Land Transfer Act, 1875, of the land intended to be hereby conveyed, has agreed to sell the same to the said C. D., E. F., and G. H., for the sum of £——: And whereas it has been agreed between the said C. D., E. F., and G. H. that the said C. D. shall provide one moiety of the said purchase-money, the said E. F. one fourth part thereof, and the said G. H. the remaining one-fourth part thereof, and that they shall take the said land as tenants in common in the shares hereinafter expressed:

and that purchasers shall provide purchase-money in unequal shares. And whereas it is intended that these presents shall be accompanied by an instrument of transfer in the prescribed form so as to enable the said C. D., E. F., and G. H. to be registered as proprietors of

(*a*) As the Land Registry, under the Act of 1875, does not recognize any interest in co-proprietors except joint tenancy, a separate deed is necessary where it is intended that purchasers shall take as tenants in common.

the said land: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £——, paid to the said A. B. by the said C. D., E. F., and G. H. in the shares following (namely) the sum of £—— by the said C. D., the sum of £—— by the said E. F., and the sum of £—— by the said G. H. (the receipt whereof the said A. B. hereby acknowledges): THE said A. B. [as beneficial owner (*a*)] hereby conveys unto the said C. D., ALL, &c. (*parcels as described on the register*): TO HOLD the same unto the said C. D., in fee simple, TO THE USES following (that is to say) as to two undivided fourth parts thereof, TO THE USE of the said C. D. in fee simple: As to one other undivided fourth part thereof, TO THE USE of the said E. F. in fee simple: And as to the remaining one undivided fourth part thereof, TO THE USE of the said G. H. in fee simple.

OF REGISTERED LAND SO AS TO CREATE TENANCY IN COMMON.

Vendor conveys to purchasers as tenants in common in fee.

IN WITNESS, &c.

2. INSTRUMENT OF TRANSFER.

(*Transfer by A. B. to C. D., E. F., and G. H., see Precedent No. VIII.*, p. 696, *supra*.)

No. XI.

TRANSFER *of* REGISTERED LAND *to three* PARTNERS *as* PURCHASERS, *and* DECLARATION *by them by* SEPARATE DEED *that land shall be considered* PARTNERSHIP PROPERTY.

OF REGISTERED LAND TO PURCHASERS.

(*The land will be transferred by the vendor to the partners by an instrument in the prescribed form, see Precedent No. VIII., p.* 696, *and the following declaration by separate deed will be executed by the partners at the same time.*)

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., C. D. of, &c., and E. F. of, &c., carrying

(*a*) These words may be omitted if the title is registered as absolute.

OF REGISTERED LAND TO PURCHASERS.

on the business of —— as partners under the style or firm of —— SEND GREETING: WHEREAS the said A. B., C. D., and E. F. lately purchased from G. H. of, &c., the land entered in the register kept at the Office of Land Registry under No. —— for the sum of £—— out of their partnership property: AND by an instrument of transfer bearing even date with these presents the said X. Y. has in consideration of £—— transferred the said land to the said A. B., C. D., and E. F.: NOW THESE PRESENTS WITNESS, that in consideration of the premises they the said A. B., C. D., and E. F. do hereby declare and agree that the land transferred to them as aforesaid shall be held by them as part of their partnership property.

Recites purchase by partners and transfer to them.

Declaration that land shall be held as partnership property.

IN WITNESS, &c.

No. XII.

OF REGISTERED LAND PURCHASED BY TRUSTEES OF SETTLEMENT.

TRANSFER *of* REGISTERED LAND *to* TRUSTEES *purchasing under a* POWER *in a* PERSONALTY SETTLEMENT, *and* DECLARATION *of* TRUST *by* SEPARATE DEED (*a*).

1. INSTRUMENT OF TRANSFER.

(*This will be in the prescribed form. See Precedent No. VIII., supra.*)

2. DECLARATION OF TRUST.

TO ALL TO WHOM THESE PRESENTS SHALL COME, E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees of settlement*), and A. B. of, &c., and C. his wife (*the persons whose consent is required to the investment*), SEND GREETING: WHEREAS these presents are supplemental to an indenture dated, &c., and made, &c. (*date and parties*), being a settlement made

Recite that deed is supplemental to settlement.

(*a*) Where registered land is purchased by the trustees of a personalty settlement, the land should be transferred to the trustees by an instrument of transfer in the prescribed form so as to make them registered proprietors. If the consent of the husband and wife or any other persons is required to a sale, an application should be made to the registrar under sect. 58 to make an entry in the register to the effect that no transfer or charge be made during the lives of A. B. and C. his wife, or the survivor of them, without their, his, or her consent.

on the marriage of the said A. B. and C. his wife, then C. D., of a sum of £—— Consolidated £3 per cent. Annuities and other personal property: AND WHEREAS under a power in that behalf contained in the said indenture of settlement the said E. F., G. H., and I. K., with the consent of the said A. B. and C. his wife, lately agreed to purchase from X. Y. the land entered in the register kept at the Office of Land Registry under No. —— and registered with an absolute title for the sum of £—— to be raised out of the said trust funds: AND WHEREAS in pursuance of the said agreement the said E. F., G. H., and I. K. have raised the said sum of £—— out of the said trust funds and paid the same to the said X. Y.: AND by an instrument of transfer bearing even date with these presents the said X. Y. in consideration of the said sum of £——, has transferred the said land to the said E. F., G. H., and I. K.: NOW THESE PRESENTS WITNESS, that in consideration of the premises the said A. B. and C. his wife hereby declare that the said land transferred to the said E. F., G. H., and I. K. as aforesaid, was purchased by them out of the trust funds with the consent of the said A. B. and C. his wife: AND the said E. F., G. H., and I. K. declare that they will stand possessed of the said land upon the trusts and with and subject to the powers and provisions applicable thereto under the said indenture of settlement: AND IT IS ALSO AGREED AND DECLARED, that an application shall be forthwith made to the registrar to make an entry in the register to the effect that no transfer or charge of the said land shall be made unless the said A. B. and C. his wife or the survivor of them consent thereto, or until further order.

OF REGISTERED LAND PURCHASED BY TRUSTEES OF SETTLEMENT.

Purchase by trustees under power with consent of husband and wife,

and transfer of land to trustees.

Witnessing part.

Declaration that land shall be held upon trusts of settlement.

IN WITNESS, &c.

3. APPLICATION TO REGISTER RESTRICTION.

The Land Transfer Act, 1875.

Office of Land Registry.

E. F., G. H., and I. K., the registered proprietors of the land No. —— on the register, request the registrar to make an entry in the register that no transfer shall be made or charge created on such land unless the consent of A. B. of, &c., and C. his wife or the survivor of them, is given to the transfer or the creation of the charge.

Application by registered proprietor to registrar to make entry on register prohibiting transfer without consent of tenant for life.

No. XIII.

OF REGISTERED LAND TO USES OF SETTLEMENT.

CONVEYANCE *and* TRANSFER *of* LAND REGISTERED *under the Act of* 1875, *where the* LAND *is purchased by a* TENANT *for* LIFE *under the powers of the* SETTLED LAND ACTS (*a*).

1. CONVEYANCE BY DEED TO USES OF SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN X. Y. of, &c. (*vendor*) of the first part, C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*trustees*), of the second part, and A. B. of, &c. (*tenant for life*), of the third part: WHEREAS under an indenture of settlement dated, &c., and made, &c., the capital messuage or mansion house called —— and divers other messuages, lands, and hereditaments, situate in, &c. (hereinafter referred to as "the settled hereditaments"), now stand settled to uses under which the said A. B. is tenant for life in possession, and the said C. D., E. F., and G. H., are trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890: AND WHEREAS the said C. D., E. F., and G. H., as such trustees as aforesaid, have in their hands capital money liable to be laid out in the purchase of land to be made subject to the settlement: AND WHEREAS the said A. B. has agreed with X. Y. who is the registered proprietor with an

Recital of settlement,

that trustees have capital money.

Agreement by tenant for life to pur-

What course should be pursued when registered land is purchased by trustees of a real property settlement.

(*a*) When land registered under the Act of 1875 is purchased by trustees of a real property settlement under the powers of the Settled Land Acts, some difficulty arises as to the manner in which the purchase is to be carried out. The Settled Land Act, 1882, s. 24, provides that the land shall be conveyed to the uses of the settlement, or as near thereto as the circumstances will permit. But the Land Transfer Act, 1875, and the rules thereunder only permit a registered disposition of the entire fee simple to one person or to several persons not exceeding four in number as joint tenants, and the question therefore arises whether the registered transfer should be made to the tenant for life, or to the trustees. The plan recommended by the Land Registry Office is for the vendor to convey the property to the uses of the settlement by an ordinary deed, and at the same time to execute an instrument in the prescribed form transferring the property to the tenant for life so as to enable him to be registered as proprietor. This should be accompanied by an application to the registrar to make an entry in the register under sect. 58 of the Act to the effect that no transfer or charge shall be made unless the money paid as the consideration for the same is paid to the persons therein named, viz., the trustees of the settlement, or until further order. This is the plan adopted in the above precedent.

absolute title of the land intended to be hereby conveyed, for the purchase from him of the said land for the sum of £——, and has directed the said C. D., E. F. and G. H. to apply part of the said capital money in the payment of the said purchase-money: AND WHEREAS it is intended that these presents shall be accompanied by an instrument of transfer in the prescribed form by the said X. Y. to the said A. B. so as to enable the said A. B. to be registered as the proprietor of the said land, and that an application shall at the same time be made to the registrar to make an entry on the register to the effect that no transfer or charge of the said land shall be made unless the money payable as the consideration for the same is paid to the said C. D., E. F., and G. H., or until further order: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £——, paid to the said X. Y. by the said C. D., E. F., and G. H., as such trustees as aforesaid (the receipt whereof the said X. Y. hereby acknowledges), the said X. Y. [as beneficial owner] hereby conveys unto the said C. D., E. F., and G. H., ALL, &c. (*parcels as described on the register*): TO HOLD the same unto the said C. D., E. F., and G. H., in fee simple, To the uses upon the trusts and subject to the powers and provisions which, under the said indenture of settlement or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled hereditaments.

OF REGISTERED LAND TO USES OF SETTLEMENT.

Recital of purchase, and direction to trustees to pay purchase-money

Recital of intended transfer in prescribed form to tenant for life.

Witnessing part.

Vendor conveys to user of settlement.

IN WITNESS, &c.

2. INSTRUMENT OF TRANSFER.

(*Transfer by X. Y. to A. B., see Precedent No. VIII., p.* 696, *supra.*)

3. APPLICATION TO REGISTER RESTRICTION.

The Land Transfer Act, 1875.

Office of Land Registry.

A. B., the registered proprietor of the land No. ——, on the register, requests the registrar to make an entry on the register that no transfer shall be made or charge created on such land, unless the money paid as the consideration for such transfer or charge is paid to C. D. of, &c., E. F. of, &c., and G. H. of, &c.

No. XIV.

OF LAND SUBJECT TO BUILDING COVENANTS.

CONVEYANCE *and* TRANSFER *of* REGISTERED LAND *subject to* COVENANTS *as to* BUILDING *and* USER, *some being* CONSTRUCTIVE *and some* RESTRICTIVE.

1. CONVEYANCE BY DEED.

THIS INDENTURE, made the —— day of ——, 18—,

Parties. BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:

Recital of agreement to sell, WHEREAS the said A. B., being the registered proprietor with an absolute title under the Land Transfer Act, 1875, of the land numbered —— on the register, has agreed with the said C. D. to sell to him the fee simple of the land intended to be hereby conveyed (part of the said registered land), for the sum of £——, subject to the conditions as to building and user set forth in the schedule hereto:

and of intended instrument of transfer and application to registrar to annex restrictive conditions. AND WHEREAS it is intended that these presents shall be accompanied by an instrument of transfer in the prescribed form so as to enable the said C. D. to be registered as proprietor of the land hereby conveyed, and by an application from the said A. B. to the registrar to register as annexed to the said land, the conditions set forth in the second part of the schedule hereto:

Witnessing part. NOW THIS INDENTURE WITNESSETH, &c. (*Conveyance in the ordinary form from A. B. to C. D., in fee*):

Conveyance to purchaser and covenants by him to observe conditions. AND the said C. D. hereby covenants with the said A. B. that he the said C. D., his heirs and assigns, will at all times hereafter observe and perform all the conditions expressed in the schedule hereto.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

THE FIRST PART (*to comprise such of the conditions as are not restrictive and cannot be made to run with land in equity*).

THE SECOND PART (*to comprise the restrictive conditions*).

2. INSTRUMENT OF TRANSFER.

(*See Precedent No. VIII., supra.*)

3. APPLICATION TO REGISTRAR TO ANNEX CONDITIONS. OF LAND SUBJECT TO BUILDING COVENANTS.

The Land Transfer Act, 1875.

Office of Land Registry.

A. B., the registered proprietor of the land No. —— on the register, and part of which is about to be transferred to C. D. of, &c., pursuant to the instrument of transfer left herewith, hereby requests the registrar to register as annexed to the part of the land to be so transferred the conditions, a printed copy of which is left herewith. The said C. D. consents to this application.

Dated this —— day of ——, 18—.

(*Signatures of A. B. and C. D.*)

Witness,

X. Y., a solicitor.

No. XV.

EXCHANGE *of* REGISTERED LAND *under the* ACT OF 1875. EXCHANGE.

(*Will be the same as No. VIII., except that the consideration will be:* in consideration of the transfer to me of other land by way of exchange.)

No. XVI.

CHARGE BY REGISTERED PROPRIETOR.

CHARGE *by a* REGISTERED PROPRIETOR *under the* ACT OF 1875 (*a*).

The Land Transfer Act, 1875.

Office of Land Registry.

Instrument of Charge.

No. of Title charged.

18—. In consideration of [*four thousand pounds*], I, A. B. of, &c., hereby charge all the land comprised in the title above referred to with the payment to C. D. of, &c., on the —— day of ——, 18—, of the principal sum of [£4,000], with interest at £— per cent. per annum, and with a power of sale to be exercised after the —— day of ——, 18—, subject to the stipulations contained in the schedule hereto.

SCHEDULE.

(*Such of the following provisions will be inserted as are agreed on.*)

A. *Incorporation of provisions of Conveyancing Act*, 1881.—The registered proprietor for the time being of the charge shall have the like powers as are conferred on a mortgagee by the Conveyancing Act, 1881, s. 19, sub-s. 1, in cases where the mortgage is made by deed, and the power of sale contained in the charge shall take effect accordingly.

The following sections of the same Act shall also apply:—

Sect. 20.

Sect. 21, sub-sect. 2, as though the transfer on a sale made by the proprietor of the charge was made by a conveyance in professed exercise of the power of sale conferred by the said Act.

Sect. 22, sub-sect. 1.

Sect. 23.

B. *Reduction of interest on punctual payment.*—The interest secured by the charge shall be reduced to —— per cent. in every half-year in which it is paid within twenty-one days of its falling due.

C. *Principal not to be called in.*—None of the principal secured by the charge shall be called in till the —— day of ——, 18—, unless the interest shall fail to be paid within twenty-one days of its falling due.

D. *Principal not to be paid off.*—None of the principal secured by the charge shall be paid off till the —— of ——, 18—, unless the proprietor of the charge shall be willing to accept it.

(*a*) See Land Registry Rules, 1889, Form 8.

CHARGE BY REGISTERED PROPRIETOR.

E. *Payments by instalments.*—If the interest secured by the charge shall be paid within twenty-one days of its falling due, the principal secured by the charge shall be payable by instalments of £—— each, to be paid on the —— of —— and the —— of —— in every year, the first of such instalments to be paid on the —— of ——, 18—. Provided that on failure of payment of any instalment within twenty-one days of its becoming payable, the whole of the principal remaining owing on the said security shall become payable at once.

F. *Debtor's liberty to pay off notwithstanding.*—Provided nevertheless that the whole or any part (not less than £—— at any one time) of the above-mentioned principal may be paid off on giving one calendar month's notice in writing of the intention to do so, and on paying up all arrears of interest that may be due at the time of such payment of principal.

G. *Entry negativing implied covenant to pay.*—No covenant to pay principal or interest is implied in the charge.

(*Signature of proprietor and of witness, if any.*)

Verification of transferor's signature.

(*As in Precedent No. VIII., supra, p.* 696.)

No. XVII.

TRANSFER *of* CHARGE *by a* REGISTERED PROPRIETOR (*a*).

TRANSFER OF CHARGE BY REGISTERED PROPRIETOR.

The Land Transfer Act, 1875.

Office of Land Registry.

No. ——. *Transfer of Charge.*

I, C. D., the registered proprietor of the charge dated the —— day of ——, 18—, on the land registered in the name of A. B., under the above number, in consideration of [*four thousand pounds*] paid to me, transfer such charge to E. F. of, &c., as proprietor.

(*Signature of registered proprietor.*)

Witness.

(*a*) See Rules of 24th Dec. 1875, Form No. 21.

BILLS OF SALE.

Division of subject.

It is proposed in this Dissertation to consider:—I. The modes of transfer of personal chattels: II. The provisions of the Bills of Sale Acts: III. In what cases a disposition of personal chattels is liable to be avoided by creditors under the statute 13 Eliz. c. 5, or under the bankruptcy law as being an act of bankruptcy or fraudulent preference, or as being in the order and disposition of the bankrupt with the consent of the true owner, or as a voluntary settlement: IV. The proper mode of framing a bill of sale by way of mortgage, and the operation of bills of sale of after-acquired chattels.

I. *The modes of transfer of personal chattels.*

Modes of transfer of personal chattels.

The property in personal chattels may be transferred by actual delivery, by deed, or by a contract for sale.

Parol gift of chattels void.

A *gift* of chattels must be by delivery or deed. A parol gift without delivery is void (*a*).

Delivery: what is sufficient.

Where actual delivery of the articles which are the subject of the gift is impossible or inconvenient, a delivery of some symbol of possession will be sufficient, as where the goods are in a warehouse, a delivery of the key (*b*). The marking of the goods by the purchaser has been also held to be a delivery and taking possession (*c*). So, also, if goods are in the custody of a third person on behalf of the owner, an agreement between the owner and a purchaser or mortgagee

Constructive delivery.

(*a*) Irons *v.* Smallpiece, 2 B. & Ald. 551; Cochrane *v.* Moore, 25 Q. B. D. 57.

(*b*) Ryall *v.* Rowles, 1 Ves. Senr. 366.

(*c*) Ellis *v.* Hunt, 3 T. R. 464; Stoveld *v.* Hughes, 14 East, 308.

that the goods shall belong to the latter, either absolutely or by way of security, if notified to the custodian, and assented to by him, is equivalent to delivery (*d*).

Bill of sale.

A deed or other instrument transferring the property in chattels, is usually called a bill of sale.

Contract for sale, requisites of, under Statute of Frauds.

A contract for the sale of goods, if of the value of 10*l.* or upwards, must, under the Statute of Frauds (*e*), be accompanied by acceptance of part of the goods or payment of part of the money as earnest money by the purchaser, or, there must be a memorandum in writing signed by the parties to be charged, or their agents, and if the contract is not to be performed within a year, a memorandum in writing is necessary, however small may be the value of the goods. Subject to this condition the contract passes the property in the goods at law, and the vendor is bound on payment of the full price to deliver them over to the vendee.

No stamp duty on sale.

An agreement, letter, or memorandum, for or relating to the sale of goods, wares, or merchandise, is exempted from stamp duty (*f*), and it is apprehended that this exemption extends to an instrument purporting to be a present assignment of this description of property (*g*).

Fixtures.

Fixtures, *i. e.*, chattels affixed to the land or to a building, are, when so affixed, part of the land, and pass by an assurance of the land itself without being expressly mentioned, and this is so whether the assurance be absolute or by way of mortgage, legal or equitable (including a deposit of deeds), and whether the person making the assurance, or the depositor, be absolute owner of the land and fixtures, or a lessee of the land who has put up the fixtures and has a right to remove them as against his landlord (*h*). But a lessee or

(*d*) Hilton *v.* Tucker, 39 C. D. 669; Mills *v.* Charlesworth, 25 Q. B. D. 421; S. C. on appeal, (1892) A. C. 231.

(*e*) 29 Car. 2, s. 4.

(*f*) 54 & 55 Vict. c. 39, sch. "Agreement."

(*g*) See Horsfall *v.* Key, 17 L. J. Ex. 266.

(*h*) Colgrave *v.* Dios Santos, 2 B. & C. 76; Longstaff *v.* Meagoe, 2 Ad. & El. 167; *Ex parte* Cotton, 2 M. D. & De G. 725; Clinie *v.* Wood, L. R. 3 Ex. 328; *Ex parte* Astbury, L. R. 4 Ch. 630; *Ex parte* Broadwood, 1 M. D. & De G. 621; *Ex parte* Price and another, 2 M. D. & De G. 58; Meux *v.* Jacobs, L. R. 7 H. L. 481.

tenant having put up fixtures which he has a right to remove, may assign them by deed or writing separately from his interest in the land. Such an assignment operates as a transfer of the right of severance, and a licence to the assignee to enter upon the land for the purpose of exercising such right (*h*).

(*h*) Thomson *v.* Pettit, 16 L. J. Q. B. 162; Horsfall *v.* Key, 17 L. J. Ex. 266.

Right to fixtures as between landlord and tenant.

The rule with reference to fixtures as between landlord and tenant is that everything which the latter affixes for the better enjoyment of the property during the term, whether the annexation is made for the purpose of trade, or for domestic convenience or ornament, may be removed by him during the term, provided the removal can be made without material injury to the freehold, and provided the fixture is not a substantial addition to the house, similar to the conservatory erected by the tenant in Buckland *v.* Butterfield, 2 Brod. & Bing. 54; or a building with foundations let into the soil, as in the case of Whitehead *v.* Bennett, 27 L. J. Ch. 474; see also Thresher *v.* East London Waterworks Company, 2 B. & C. 608. Accordingly, it has been held that vats, colliery engines, looms fastened to the floor, and other fixed machinery, wooden cornices, chimney pieces, fixed wainscot, hangings, pier-glasses, grates, stoves, cooling coppers, blinds, a fixed pump, &c., are removable by the tenant. (Poole's case, 1 Salk. 368; Lawton *v.* Lawton, 3 Atk. 13; Dean *v.* Allalley, 3 Esp. N. P. C. 11; Foley *v.* Addenbroke, 13 M. & W. 174; Avery *v.* Cheslyn, 3 Ad. & El. 75; Boyd *v.* Shorrock, L. R. 5 Eq. 72; Grymes *v.* Boweren, 6 Bing. 437; Queen *v.* Lee, L. R. 1 Q. B. 251; Amos & Ferrard's Fixtures, p. 40, 3rd ed., and also p. 73 in the same work as to the right of removal of things set up for agricultural purposes.)

Right to fixtures as between heir and executor.

Questions often arise as to what are to be deemed fixtures as between the heir and executor of a deceased owner. The principle is this:—If machinery or any more or less important article is affixed by the owner, though it be only slightly affixed, as by bolts, nuts, or screws, it is to be considered as part of the land, if the object is to increase the value or beneficial enjoyment of the premises, whether the purpose he has in view is profit or domestic convenience or ornament. By way of illustration, the engines which the owner affixed, as in the case of Fisher *v.* Dixon, 12 Cl. & Fin. 312, the steam-engine and boilers, mill-gear, &c., erected, as in the case of Mather *v.* Fraser, 2 K. & J. 536, the threshing-machine attached to the barn to improve its usefulness as a barn, as in the case of Wiltshear *v.* Cotterell, 1 E. & B. 674, the hay-cutter attached to the stable as an

Whether tenant may remove greenhouses.

It appears that an ordinary tenant would not be entitled to remove a greenhouse erected by him which is fixed with mortar to foundation walls of brickwork, or such a thing as a boiler built into the masonry of the building; but that greenhouses, forcing pits, and hot-bed frames erected by nursery gardeners for the purposes of their trade, may be removed so far as they do not consist of brickwork. (Jenkins *v.* Getting, 2 J. & H. 520.) Buildings erected by a rector during his incumbency may be removed by him or his representatives, when if he had been only an ordinary tenant, they would have been irremovable. Thus, when a rector built in his garden two hot-houses, consisting of a frame and glass-work resting on brick walls, it was held that his executors were entitled to remove them without incurring any liability for dilapidation or waste. (Martin *v.* Roe, 7 El. & Bl. 237.)

II. *The provisions of the Bills of Sale Acts.*

Possession of chattels carries presumption of ownership.

The possession of chattels carries with it a presumption of ownership which does not arise in relation to a house or land, the occupier of which is as often a tenant as absolute proprietor, and the claim of creditors to some protection against secret alienation of their debtors' goods has from time to time been recognized by the legislature and courts of law. Up to 1854 this protection depended mainly on the Act 13 Eliz. c. 5, and, as regards traders, on the Bankruptcy laws.

First Bills of Sale Act in 1854.

Supplemental Act in 1866, followed by Act of 1878, which has been amended by Act of 1882.

In 1854 the first Act was passed, providing for the registration of bills of sale. This, and a supplemental Act passed in 1866, whereby registration was required to be renewed every five years, were repealed, except as regards instruments made before the 1st January, 1879, by the Bills of Sale Act, 1878 (*i*). This Act has been amended and partially repealed by the Bills of Sale Act (1878) Amendment Act, 1882 (*k*), which contains provisions having for their object not only the protection of the creditors of the grantor from fraudulent dispositions by him, but also the protection of the grantor himself from the oppressive action of money lenders.

The provisions of the Acts of 1878 and 1882, taken together, are in effect as follows:—

To what Bills of Sale Act of 1878 applies.

1. The Act of 1878 applies to every bill of sale executed on or after the 1st January, 1879 (whether absolute or subject or not subject to any trust), whereby the holder or grantee has power, either with or without

adjunct and to improve its usefulness as a stable, as in Walmisley *v.* Milne, 29 L. J. C. P. 97, and the looms attached to the floors of the mill, as in Holland *v.* Hodgson, L. R. 7 C. P. Exch. 328, were held to be annexations to improve the inheritance. (See also Queen *v.* Lee, L. R. 1 Q. B. 251; Longbottom *v.* Berry, L. R. 5 Q. B. 123; The Sheffield and South Yorkshire Permanent Benefit Building Society *v.* Harrison, 15 Q. B. D. 358.)

What are not fixtures.

As to what are not fixtures, see Davis *v.* Jones, 2 Bar. & Ald. 165; Wansbrough *v.* Maton, 4 A. & E. 884; Wood *v.* Hewitt, 14 L. J. Q. B. 247; Penton *v.* Robart, 2 East, 90; Culling *v.* Tuffnal, Bul. N. P. 34; Holland *v.* Hodgson, *ubi supra*; R. *v.* Otley, 1 B. & Ad. 161; *Ex parte* Astbury, L. R. 4 Ch. 630.

(*i*) 41 & 42 Vict. c. 31.
(*k*) 45 & 46 Vict. c. 43.

notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale (*l*).

To what Bills of Sale Act of 1882 applies.

2. The Act of 1882 applies to bills of sale given on or after the 1st November, 1882, by way of security for the payment of money, and also to bills of sale given for that purpose within seven days before the 1st November, 1882, if they were not registered at that date (*m*), but not to bills of sale executed more than seven days before that date (*n*).

Bills of sale under Act of 1878 must be (1) attested by solicitor, (2) registered within seven days, and (3) state consideration;

3. Every bill of sale to which the Act of 1878 applies, and the Act of 1882 does not apply, must observe the following conditions, namely:—(1) Its execution must be attested by a solicitor of the Supreme Court, and the attestation must state that before its execution the effect thereof was explained to the grantor by the attesting solicitor (*o*); (2) It must be registered within seven days from the making or giving thereof (*p*); and (3) It must set forth the consideration for which it was given (*p*). If the above conditions have not been observed, the bill of sale is void as against all trustees of the estate of the grantor in bankruptcy or liquidation, or under any assignment for the benefit of creditors, and against execution creditors, so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the filing of the bankruptcy or liquidation petition, or the execution of the assignment, or the execution of process, and after the expiration of such seven days (*q*), are in the possession or apparent possession of the grantor (*r*). And personal chattels will be deemed

or otherwise are void against trustee in bankruptcy, &c.

(*l*) Sect. 3.

(*m*) Sect. 3.

(*n*) Hickson *v.* Darlow, 23 C. D. 690.

(*o*) Sect. 10. If the attestation clause states that the effect of the bill of sale has been explained by the solicitor, this is sufficient, although he may not in fact have done so. (*Ex parte* Mercantile Bank, 15 C. D. 42.) Nor need the affidavit state that such explanation was given. (*Ex parte* Belland, 21 C. D. 543.)

(*p*) Sect. 8.

(*q*) If the sheriff takes goods in execution before the expiration of the seven days, the grantee may set up the bill of sale, though unregistered. (See Marples *v.* Hartley, 7 Jur. N. S. 446; 30 L. J. Q. B. 92.)

(*r*) Act of 1878, s. 8.

to be in the apparent possession of the grantor so long as they remain or are in or upon any premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession may have been taken by or given to any other person (*s*).

Bill of sale under Act of 1882 void against every one, unless (1) attested, (2) registered within seven days, and (3) consideration truly stated, (4) made in accordance with form in schedule, and (5) consideration £30 at least.

4. Every bill of sale to which the Act of 1882 applies must observe the following conditions, namely:— (1) It must be attested by one or more credible witness or witnesses, not being a party or parties thereto (*t*); (2) It must be registered within seven clear days after its execution, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England, if posted immediately after the execution thereof (*u*); (3) It must truly set forth the consideration (*u*); (4) It must be made in accordance with the form in the schedule to the Act of 1882 (*x*); (5) It must be made or given in consideration of a sum not less than thirty pounds (*y*). If the above conditions are not observed, the bill of sale is absolutely void, even against the grantor.

Definition of expression "bill of sale" in Act of 1878.

5. The expression "bill of sale" as used in the Act of 1878, includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached (*z*), or receipts for purchase-moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, is conferred, but does not include

(*s*) Sect. 14. Several cases have been decided as to the meaning of "apparent possession," but they are of small practical importance having regard to the Act of 1882.

(*t*) Act of 1882, s. 10. It need not be attested by a solicitor, sect. 10 of the Act of 1878 being repealed.

(*u*) Sect. 8.

(*x*) Sect. 9. As to what is in accordance with the form, see *infra*.

(*y*) Sect. 12. See Davis *v.* Usher, 12 Q. B. D. 492.

(*z*) See Marden *v.* Marden, 7 Q. B. D. 80.

the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented (*a*).

Meaning of expression "bill of sale" in Act of 1882.

6. The expression "bill of sale," as used in the Act of 1882, has the same meaning as in the Act of 1878, except that it does not include documents given otherwise than by way of security for the payment of money.

Meaning of expression "personal chattels" in Acts of 1878 and 1882.

7. The expression "personal chattels," as used in both Acts, means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but does not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale (*a*).

Trade machinery.

8. Trade machinery comes within the term "personal chattels" for the purposes of the Acts. "Trade

(*a*) Act of 1878, s. 4.

machinery" means the machinery used in or attached to any factory or workshop, exclusive of (1), The fixed motive powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive powers; (2), The fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery fixed and loose; (3), The pipes for steam, gas, and water in the factory or workshop. The machinery or effects above excluded from the definition of trade machinery are not personal chattels within the meaning of the Acts, and an assignment of them does not require registration (*l*). "Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say, (1), In or incidental to the making any article or part of an article; or (2), In or incidental to the altering, repairing, ornamenting, finishing, of any article; or (3), In or incidental to the adapting for sale any article (*c*).

Certain instruments giving powers of distress to be deemed bills of sale.

9. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, is to be deemed a bill of sale of any personal chattels which may be seized or taken under such power of distress within the meaning of the Act of 1878, and must therefore be registered. But this does not extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent (*d*).

(*b*) Topham *v.* Greenside, &c. Co., 37 C. D. 281.

(*c*) Sect. 5.

(*d*) Sect. 6. Is has been decided

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

10. No fixtures or growing crops will be deemed, under either Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person (*d*).

Avoidance of bill of sale executed shortly after prior unregistered bill of sale.

11. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it is absolutely void to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading the Act (*dd*).

Mode of registering bills of sale.

12. The mode of registering bills of sale is as follows, namely: (1), The bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the

that the proviso does not apply to a case where the attornment clause is inserted in the mortgage itself, but only to one where a mortgagee takes possession after the mortgage and then demises to the mortgagor. (*Re* Willis, 21 Q. B. D. 384; Green *v.* Marsh, (1892) 2 Q. B. 330.) It would appear from the last-mentioned case that if the deed containing the attornment clause, &c., be registered under the Act of 1878, it is valid notwithstanding s. 9 of the Act of 1882.

(*d*) Sect. 7 of Act of 1878.

(*dd*) Sect. 9.

time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same, and of every attesting witness to such bill of sale, must be presented to, and the said copy and affidavit must be filed with the registrar within seven clear days after the making or giving of the bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is by law required to be filed; (2), If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust (*e*) not contained in the body thereof, such defeasance, condition, or declaration is to be deemed part of the bill, and must be written on the same paper or parchment therewith before the registration, and must be truly set forth in the copy filed under the Act therewith and as part thereof (*f*). And as regards a bill of sale subject to the Act of 1882, where the affidavit describes the residence of the person making or giving it to be in some place outside the London Bankruptcy district, or where the bill of sale describes the chattels as being in some place outside that district, an abstract of the contents of the bill of sale is to be transmitted by the registrar to the County Court registrar for the district, who is to file it, and allow searches to be made (*g*).

Priority of bills of sale.

13. If two or more bills of sale are given, comprising in whole or in part any of the same chattels, they have priority under both Acts in the order of the date of their registration respectively as regards such chattels (*h*).

(*e*) The declaration of trust referred to means a declaration of trust in favour of the grantor. Consequently where a bill of sale was made to A., the money being really advanced by B., it was decided that it was not necessary to state this fact on the bill of sale. (Robinson *v.* Collingwood, 34 L. J. C. P. 18.)

(*f*) Act of 1878, s. 10. In a case where a policy of assurance was deposited by way of collateral security, it was held that such security was not a condition or defeasance within the meaning of the above provision. (Carpenter *v.* Deen, 23 Q. B. D. 566.)

(*g*) Act of 1882, s. 11. See the Rules of December, 1882, for the purposes of this section.

(*h*) Act of 1878, s. 10. Under this section, a bill of sale which has been duly registered takes precedence of an unregistered bill of sale

14. A transfer or assignment of a registered bill of sale need not be registered (*i*).

Renewal of registration.

15. The registration of a bill of sale must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration becomes void, and if the bill of sale is one to which the Act of 1882 applies, the bill of sale itself becomes void (*k*). The renewal of a registration is effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security; and a form of the affidavit is set forth in Schedule (A.) to the Act of 1878. A renewal of registration does not become necessary by reason only of a transfer or assignment of a bill of sale (*l*).

Bill of sale subject to Act of 1882 void except as against grantor, as regards chattels not in schedule, and chattels of which grantor not the true owner.

Exception of growing crops separately assigned, and fixtures separately assigned, plant, &c., substituted for scheduled things of same kind.

16. Sections 4 and 5 of the Act of 1882 provide that a bill of sale shall be void except as against the grantor, (1) in respect of any personal chattels not specifically described in a schedule to be annexed thereto, or written thereon; and (2) in respect of any personal chattels specifically described in the schedule of which the grantor is not the true owner at the time of the execution of the bill of sale. But these sections do not apply to, (1) any growing crops separately assigned or charged where such crops are actually growing at the time when the bill of sale is executed, nor to (2) any fixtures separately assigned or charged, or any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery

of prior date. (Conelly *v.* Steer, 7 Q. B. D. 520; Lyons *v.* Tucker, *ib.* 523; Tuck *v.* Southern Counties Deposit Bank, 42 C. D. 471.)

(*i*) Sect. 10.

(*k*) Fenton *v.* Blythe, 25 Q. B. D. 417.

(*l*) Sect. 11.

specifically described in the schedule to the bill of sale (*m*).

Order and disposition clause in Bankruptcy Act applies to chattels comprised in a bill of sale under Act of 1882, but not to bills of sale under Act of 1878 only.

17. Chattels comprised in a bill of sale to which the Act of 1882 applies, and which is duly registered under that Act are liable, notwithstanding the registration, to be seized and sold in the event of the grantor becoming bankrupt while the chattels remain in his possession, order, or disposition, in his trade or business, under such circumstances that he is the reputed owner thereof (*n*). But chattels comprised in a duly registered bill of sale to which the Act of 1878 applies, but the Act of 1882 does not apply (and consequently bills of sale given since 1882 by way of absolute transfer (*o*)), are not in the order and disposition of the bankrupt within the meaning of the Bankruptcy Act (*p*).

Chattels in bill of sale liable to seizure in certain events only.

18. Personal chattels assigned by a bill of sale as security for payment of money cannot be seized or taken possession of by the grantee for any other than the following causes: (1), If the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security; (2), If the grantor becomes a bankrupt or suffers the goods or any of them to be distrained for rent, rates, or taxes; (3), If the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises; (4), If the grantor does not without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rents, rates, and taxes (*q*); (5), If execution has been levied against the

(*m*) Sects. 4—6.

(*n*) Bankruptcy Act, 1883, s. 44; Bills of Sale Act, 1882, s. 15, repealing sect. 20 of Act of 1878.

(*o*) Swift *v.* Pannell, 24 C. D. 210. This was decided with reference to the Bankruptcy Act, 1869, but it is apprehended that the rule will be the same under the Act of 1883.

(*p*) Act of 1878, s. 20. This is so, notwithstanding the repeal of that section by sect. 15 of the Act of 1882, it being provided in sect. 3 of the latter Act that that Act shall not apply to duly registered bills of sale (under the Act of 1878), unless the context otherwise requires. (*Ex parte* Izard, 23 C. D. 409.)

(*q*) In a case where the grantor

goods of the grantor under any judgment at law. And the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the Court, or to a judge in chambers, and such Court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just (*r*).

Chattels not to be removed or sold for five days after seizure.

19. All personal chattels seized, or of which possession is taken under or by virtue of any bill of sale by way of security, must be allowed to remain on the premises where they were so seized or so taken possession of, and cannot be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of (*s*).

Bill of sale not to protect chattels against poor and parochial rates.

20. A bill of sale to which the Act of 1882 applies is no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates (*t*).

Inspection of registered bills of sale.

21. Any person may at reasonable times search the register, on payment of a fee, and make extracts of certain particulars (*u*).

A pledge of goods is not within Bills of Sale Acts.

The Bills of Sale Acts do not apply to a pledge of goods as distinguished from a mortgage. If, then, goods are deposited with the lender, and at the same time a document is signed recording the transaction and regulating the rights of the pledgee, the document is not a bill of sale (*x*). And this is so where the delivery of the goods to the lender is constructive only, *e. g.*,

did not upon demand in writing by the grantee produce a receipt for rent which had only become due a few days before, and of which the landlord had not yet required payment, it was held that the grantor had not, without reasonable excuse, failed to produce the last receipt. (*Ex parte* Cotton, 11 Q. B. D. 301.)

(*r*) Sect. 7.
(*s*) Act of 1882, s. 13.
(*t*) Sect. 14.
(*u*) Sect. 16.
(*x*) *Ex parte* Hubbard, 17 Q. B. D. 690; Newlove *v.* Shrewsbury, 21 Q. B. D. 41; Morris *v.* Delobbel-Flipo, (1892) 2 Ch. 352.

where the custody is in a third party, who assents to an arrangement that they shall henceforth be held on behalf of the lender (*y*). But if the lender takes possession of goods in pursuance of a written document authorizing him to do so, such a document is a bill of sale, and the title of the lender depends on its validity (*z*).

Document purporting to be a purchase-hiring agreement void under the Act, if in fact intended as a security for a loan.

In determining whether a document is a bill of sale within the meaning of the Act of 1882, the Court looks at all the facts, and not only at the document itself. Thus, if a transaction taking the form of a sale of chattels by A. to B., and a purchase-hiring agreement by B. to A., is in fact intended as a security for a loan, and the relation between the parties was throughout that of borrower and lender, the Court will treat the agreement as a bill of sale by way of security for money and as void under the Act. The test in such a case is whether there was any interval between the so-called sale and the signing of the hiring agreement during which B. was the absolute owner of the chattels free from any trust in favour of A. (*a*).

III. *In what cases a disposition of personal chattels is liable to be avoided by creditors under the statute* 13 *Eliz., or under the bankruptcy law as an act of bankruptcy, or fraudulent preference, or as being in the order and disposition of the bankrupt, or as a voluntary settlement.*

Under the Act 13 *Eliz.*

Twyne's case.

In Twyne's case an assignment by a debtor of his goods to one of his creditors was adjudged fraudulent and void against another creditor under the Act 13 Eliz. c. 5, on the ground (among others) that the grantor was permitted to retain possession. But in this and subsequent cases, the continuance in posses-

(*y*) Charlesworth *v.* Mills, (1892) A. C. 231.

(*z*) *Ex parte* Parsons, 16 Q. B. D. 532.

(*a*) Madell *v.* Thomas, (1891) 1 Q. B. 231; Beckett *v.* Tower Assets Company, *ib.* 638.

sion was treated as a mark only, and not as conclusive evidence of fraud; and where such possession was consistent with the terms of the deed and the nature of the transaction, as in the case of a mortgage, the suspicion of fraud was rebutted, and the transaction could not be impeached under the Act of Elizabeth (*b*).

Alienation of chattels by registered bills of sale protected against 13 Eliz. c. 5. But Act applies to other cases.

It is apprehended that a bill of sale if duly registered would not be invalidated under the Act 13 Eliz. c. 5, by the grantor remaining in possession. If, however, a gift or sale is carried into effect by mere delivery of the goods, so as not to be within the operation of the Bills of Sale Acts, the Act of Eliz. would still apply; and if the donor or vendor after such delivery is allowed to retake and to remain in possession, the *primâ facie* presumption of fraud would require to be rebutted by evidence of *bona fides*. A *bonâ fide* agreement that the vendor should retain the goods on hire would be sufficient (*c*).

Actual fraud invalidates bills of sale, and voluntary bills of sale void if donor insolvent.

Actual fraud will always invalidate an alienation, whether by registered bill of sale or otherwise; and a voluntary bill of sale of chattels, whether registered or not, like any other voluntary conveyance of real or personal property, is, under the Act of Elizabeth, fraudulent and void against creditors, if the donor is at the time of making it in insolvent circumstances (*d*).

As an act of bankruptcy.

Under the Bankruptcy Act, 1883 (*e*), following in this respect the Act of 1869 (*f*), a debtor commits an act of bankruptcy in (amongst other) the following cases: (A) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally: (B) If in England or elsewhere he makes a fraudulent convey-

(*b*) 3 Rep. 80. Edwards *v.* Harben, 2 T. R. 587; Martindale *v.* Booth, 3 B. & Ad. 498; Cooke *v.* Walker, 3 W. R. 357; Weaver *v.* Joule, 3 C. B. (N. S.) 309; Macdona *v.* Swiney, 8 Ir. C. L. R. 73. See also Wooderman *v.* Baldock, 6 Taunt. 676.

(*c*) Byerley *v.* Prevost, L. R. 6 C. P. 144. See also Kidd *v.* Rawlinson, 2 Bos. & Pul. 59.

(*d*) See Vol. 2, Settlements.

(*e*) 46 & 47 Vict. c. 32, s. 6.

(*f*) 31 & 32 Vict. c. 71.

ance, gift, delivery, or transfer of his property, or of any part of it: (c) If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, which would under that or any other Act be void as a fraudulent preference if he were adjudged bankrupt.

Conveyance of all a trader's property for the benefit of creditors generally.

In order to bring a case within (A), there must be a conveyance or assignment in the proper sense of the term, by which the whole, or substantially the whole, of the debtor's property is vested in a trustee or trustees for the benefit of his creditors generally. Other modes of disposition, not properly conveyances or assignments, *e. g.*, a declaration of trust by the debtor, or a mere agreement by him that his property shall be dealt with for the benefit of his creditors, are not sufficient (*g*).

Conveyance of all a trader's effects to secure an antecedent debt, an act of bankruptcy.

As regards (B), it has been long settled that a conveyance by a debtor of all his effects, or of all his effects with a colourable or trifling exception, to one of his creditors to secure an antecedent debt, is fraudulent within the meaning of the bankruptcy law, and an act of bankruptcy, and the law is the same whether the debtor be a trader or not (*h*).

Sale to a *bonâ fide* purchaser of all a trader's effects not an act of bankruptcy, nor a mortgage to secure a present advance.

But an absolute sale to a *bonâ fide* purchaser of the whole of a debtor's stock in trade is not an act of bankruptcy (*i*). So also a mortgage of the whole of a debtor's stock in trade to secure a present advance is a valid transaction, and it makes no difference that the deed enables the mortgagee to seize after-acquired property, or that the advance bears a small proportion to the value of the goods assigned (*k*). It has been held, moreover, that a mortgage which on the face of it appears to be made to secure an existing debt may

(*g*) *In re* Spackman, 24 Q. B. D. 728.

(*h*) Smith *v.* Cannan, 2 El. & B. 35; *Ex parte* Foxley, L. R. 3 Ch. 515; *In re* Wood, L. R. 7 Ch. 302.

(*i*) Baxter *v.* Pritchard, 1 Ad. & El. 456.

(*k*) Hutton *v.* Crutwell, 1 El. & B. 15; 22 L. J. Q. B. 78; Bittleston *v.* Cooke, 6 El. & B. 296; 25 L. J. Q. B. 281; Whitmore *v.* Claridge, 31 L. J. Q. B. 141; 33 L. J. Q. B. 87; *In re* Colemere, L. R. 1 Ch. 128; Woodhouse *v.* Murray, L. R. 4 Q. B. 27; Mercer *v.* Peterson, L. R. 3 Exch. 104.

be supported by evidence that it was made in pursuance of a parol agreement entered into at the time of the loan (*l*). But it must be made clear to the Court that the agreement was *bonâ fide*, and that it was not in fact an agreement that the bill of sale should be postponed until the grantor was on the eve of bankruptcy, or in order to protect his credit (*m*).

What is a substantial exception so as to prevent operation of doctrine.

When a portion of the debtor's effects is excluded from the assignment, the question has to be decided whether the part so excluded is or is not a substantial part, so as to prevent the operation of the above doctrine, and this must depend on the particular circumstances of each case.

Ex parte Bailey.

In *Ex parte Bailey* (*n*), where a trader executed an assignment of certain policies of assurance and all his credits, together with his books of account (being all his property except his furniture and stock in trade), and it appeared that executions had issued prior to the deed, under which the furniture and stock in trade were seized, it was held that the assignment was void, although the bankrupt might not have been aware when he executed the assignment that the executions had issued. *Turner*, L. J., observed, "I apprehend that the true question is, whether there is such an assignment as prevents the trade being carried on; and I agree with the learned Commissioner that carrying on trade means carrying it on in the usual and ordinary course. One reason why an assignment of the entire estate constitutes an act of bankruptcy is because the bankrupt is thereby prevented from carrying on trade, and this reason must equally apply if the assignment be such as to prevent the trade being carried on. Now this bankrupt has assigned all debts and all bills of exchange and promissory notes, and all books of account in which such debts or sums of money are entered; and it is, I think, impossible to say that trade can be

(*l*) Harris *v.* Rickett, 4 H. & N. 1; 28 L. J. Ex. 197.

(*m*) *Ex parte* Fisher, L. R. 7 Ch. 636; *Ex parte* Burton, 13 C. D. 102; *Ex parte* Kilner, *ib.* 245; *Ex parte* Hauxwell, 23 C. D. 626.

(*n*) 3 De G. M. & G. 534.

carried on in the usual and ordinary course without the books of account evidencing the debts which have been contracted in carrying on the trade." In *Younge* v. *Waud* (*o*), it was held that an assignment by way of mortgage by a trader of his stock and implements of trade, where such assignment did not include a moiety of the whole of his effects, was not *per se* an act of bankruptcy, although the effect of putting the instrument in force would be to stop the business. *Pollock*, C.B., said, "The law is not that a man commits an act of bankruptcy by disabling himself from carrying on his business, but that he commits an act of bankruptcy when the necessary result of that act is to defeat or delay creditors who are not the objects of that particular conveyance." In *Hale* v. *Allnutt* (*p*), A., a trader, executed a mortgage of the public-house in which he carried on his business, and his trade and other fixtures and movable property in the house, other than his stock in trade, to B., to secure £570 then due. The value of the property mortgaged was between £300 and £400, and the value of the bankrupt's assets at the time was between £1,100 and £1,200; his debts amounted to nearly £4,000. It was held that the deed was valid. *Jervis*, C. J., observed, "This does not fall within that class of cases in which an assignment has been made of the whole, or the whole with a colourable exception, of the trader's property; the necessary result of which is to defeat and delay creditors by producing absolute present insolvency and incapacity to carry on trade and withdrawing the whole of the property from the reach of the creditors by the ordinary legal remedies" (*q*).

Younge *v.* Waud.

Hale *v.* Allnutt.

In estimating whether an assignment comprises the whole of a trader's property the value of his book debts is to be taken into account (*r*).

Value of book debts to be calculated.

(*o*) 18 Exch. 232.

(*p*) 13 C. B. 505.

(*q*) See also Smith *v.* Cannan, 2 El. & B. 35; Johnson *v.* Fesemeyer, 3 De G. & J. 13; Mather *v.* Fraser, 2 K. & J. 536; Oriental Banking Co. *v.* Coleman, 3 Giff. 11; Smith *v.* Timms, 11 W. R. 381; *Ex parte* Wensley, 1 De G. J. & S. 275; Goodricke *v.* Taylor, 2 De G. J. & S. 135.

(*r*) *Ex parte* Burton, 13 C. D. 103.

Where mortgage is partly for old debt and partly for new advance.

Where a trader assigns all his effects to a creditor in consideration partly of an existing debt, and partly of a new advance, the validity of the transaction depends on whether the object of the transaction is, by means of the new advance, to enable or assist the trader to continue his trade, or whether the new advance is colourable only, the real intention being to give a security for the past debt. Thus, in *Pennell* v. *Reynolds* (*s*), A., a trader, being indebted to B., executed to him an assignment of all his effects to secure the existing debt, and a present advance of £250, and it was held that the assignment was not necessarily an act of bankruptcy. *Willes*, J., observed, "If there is an assignment of property with a real and substantial exception, in the absence of fraud that will not be an act of bankruptcy. In our judgment a present substantial advance of money puts the transaction upon the same footing as an assignment, with a substantial exception of part of the property. It is not necessarily an act of bankruptcy. The advance may be the means of enabling the assignor to go on with his trade, and if so, the transaction may be beneficial to the creditor" (*t*).

When assignment of all to secure past debt and future advances is good.

An assignment of all the debtor's property to secure a past debt and a future advance is good, if there is a contemporaneous agreement to make such advance to a sufficient amount, and such an advance is in fact made. The agreement need not be technically binding at law or in equity; a *bonâ fide* promise is sufficient. In the absence of such an agreement the bill of sale would be void (*u*).

Forbearance is not good consideration.

A forbearance to enforce an existing security is not a good consideration for supporting a subsequent assignment of the debtor's whole property to secure the pre-existing debt (*x*).

(*s*) 11 C. B. (N. S.) 709.

(*t*) See also Bell *v.* Simpson, 2 H. & N. 410; Allen *v.* Lonnett, L. R. 5 Ch. 577; Lomax *v.* Buxton, L. R. 6 C. P. 107; *In re* Winstanley, 1 C. D. 290; *In re* Chapman, 26 C. D. 338.

(*u*) *Ex parte* Wilkinson, 22 C. D. 788; *Ex parte* Dann, 17 C. D. 26.

(*x*) *Ex parte* Cooper, 10 C. D. 313; *Ex parte* Payne, 11 C. D. 539.

The fact that an assignment of the whole of a debtor's property is made under pressure does not prevent it from being an act of bankruptcy (*y*). When bill of sale of all made under pressure.

The Act (*z*) provides that the act of bankruptcy on which the adjudication is grounded must have occurred within three months before the presentation of the petition for adjudication. It follows that an assignment of the whole of a debtor's property to secure a pre-existing debt, cannot be impeached as an act of bankruptcy, unless the petition for adjudication is presented within three calendar months from the execution of the deed (*a*). Bill of sale cannot be impeached as an act of bankruptcy, unless adjudication is within three months.

Fraudulent preference.

The Act also provides (*b*) that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within *three* months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy; but this section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt. Fraudulent preference.

Before the Act of 1869 the doctrine of fraudulent preference depended on judicial decisions. But since that Act the Court in determining what is a fraudulent In determining what is fraudulent preference, statutory defi-

(*y*) Newton *v.* Chandler, 7 East, 138; Jones *v.* Hasker, L. R. 6 Q. B. 77.

(*z*) 46 & 47 Vict. c. 52, s. 6.

(*a*) Allen *v.* Bonnett, L. R. 5 Ch. 577.

(*b*) Sect. 48. This is substantially a copy of sect. 92 of the Act of 1869.

nition alone to be regarded.

preference will have regard to the statutory definition only, and is not bound by the old cases (*c*). The simple question now is whether the payment or transaction sought to be set aside was or was not made with a view to give one creditor a preference over the others, and this is a question of fact to be determined by the Court or jury, according to the particular circumstances of each case. If the payment, &c., has been spontaneous on the part of the debtor, there would be a strong inference on the affirmative side; but if there had been pressure on the creditor's part it would still be a question whether the payment was made under the force of such pressure. If it appeared from all the circumstances that the dominant substantial view of the debtor was to give the preference, though this might not be the only motive, the payment would be an act of bankruptcy (*d*).

As to goods in order and disposition of bankrupt.

Order and disposition clause in Bankruptcy Act applicable to bills of sale by way of security,

The Bankruptcy Act, 1883, includes, as part of the property divisible among the creditors of the bankrupt, "all goods being at the commencement of the bankruptcy in the possession, order and disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof" (*e*).

Previously to the passing of the Bills of Sale Act, 1878, it was decided that a registered bill of sale was no protection, as regards personal chattels not being fixtures comprised in it, against the operation of the order and disposition clause in the Bankruptcy Act then in force (*f*); and that it made no difference for the purpose of this enactment that the bill of sale was a mortgage, and that the mortgagor's possession was

(*c*) *Ex parte* Griffith, 23 C. D. 69; *Ex parte* Taylor, 18 Q. B. D. 295. The cases decided before 1869 are omitted in this edition for the reason stated above.

(*d*) *Ex parte* Hill, 23 C. D. 695.

(*e*) Sect. 44.

(*f*) Stansfield *v.* Cubitt, 2 D. & J. 222.

in accordance with its terms (*g*). Section 20 of the Act of 1878 gave an express protection against the order and disposition clause to bills of sale made on or after the 1st January, 1879, and duly registered, but that section has been repealed by section 15 of the Act of 1882 as regards instruments to which the last-mentioned Act applies. It follows that as regards personal chattels not being fixtures comprised in a bill of sale given by a trader by way of security for money since the 1st November, 1882, and being goods in his possession in his trade or business, the order and disposition clause remains in force, notwithstanding that such bill of sale may be duly registered.

but not to bills of sale between 1st January, 1879, and 1st November, 1882.

The order and disposition clause does not apply to chattels which have acquired the character of fixtures, whether the premises to which they are attached be freehold or leasehold, and whether as between landlord and tenant the fixtures are the absolute property of the landlord, or are removable by the tenant, and whether they are disposed of by the same instrument with the land, or separately (*h*), nor does it apply to goods in the bankrupt's possession otherwise than in his trade or business, *e. g.*, the furniture in his private residence.

Does not apply to fixtures.

If a tradesman in the ordinary course of his business has in his possession the goods of customers, such possession does not constitute him reputed owner, and the goods will not pass to the trustee on his bankruptcy. Thus, books deposited by the owner with a bookseller, and kept by him as a part of his general stock, and sold on commission, are not in the order and disposition of the bookseller (*i*). So books left with a publisher for sale in the usual course of trade (*k*), and furniture hired by an hotel keeper (*l*), do not, upon his bankruptcy, pass to the trustee.

Does not apply to goods retained by mortgagor in the usual course of trade.

(*g*) Freshney *v.* Kerrick, 1 H. & N. 653; 26 L. J. Ex. 129; Spackman *v.* Miller, 9 Jur. N. S. 50.

(*h*) *Ex parte* Barclay, 5 De G. M. & G. 403; Whitmore *v.* Empson, 23 Beav. 313; Mather *v.* Fraser, 2 K. & J. 536; Walmisley *v.* Milne, 29 L. J. (N. S.) C. P. 97.

(*i*) Whitfield *v.* Brand, 16 M. & W. 282.

(*k*) Greenwood, *Ex parte* Thickbroom, 6 L. T. N. S. 558; see also *Ex parte* Wingfield, 10 C. D. 591.

(*l*) Crawcour *v.* Salter, 18 C. D. 30.

Carriages kept by coach-maker.

So also carriages kept on the premises of a coach-maker for the true owner, although they may be placed in his front window and actually sold, are not in his order and disposition, as it is the custom of coachmakers to keep carriages after they are made and to exhibit them for display (*m*). So if a ship in course of construction is in the yard of the shipbuilder, or goods are being manufactured, such ship or goods if purchased are not in the order and disposition of the shipbuilder or manufacturer (*n*). And in a case where a person advanced money on a ship in course of construction and took an assignment of such ship by way of mortgage to secure the repayment of the advance, it was held that the mortgage was good as against the assignees in bankruptcy of the shipbuilder (*o*).

Farming produce left on farm after sale.

There are also other instances in which custom will take the case out of the rule of reputed ownership. Thus where farming produce was purchased, and the price was paid before the bankruptcy, but it appeared to be the custom of farmers to leave such produce upon the farm of the seller until it suited the convenience of the buyer to take it away, it was held that this custom exempted such produce from passing to the assignees under the law of reputed ownership (*p*); and a similar decision was given in a case where butts of whisky were, in accordance with the custom of the trade, allowed to remain in the vendor's bonded warehouse after a sale (*q*).

Goods in possession of bankrupt on a contract of hiring.

Where a trader sells chattels and continues in possession on a contract of hiring, and then becomes bankrupt, the goods will pass to the trustee in bankruptcy, unless the change of ownership has been made notorious (*r*), or unless the sale has been carried into effect by a bill of sale registered under the Bills of

(*m*) Bartrum *v.* Payne, 3 Car. & P. 175.

(*n*) Holderness *v.* Rankin, 28 Beav. 150; Swainston *v.* Clay, 4 Giff. 187.

(*o*) Swainston *v.* Clay, *ubi supra*.

(*p*) In re Terry, 11 W. R. 113.

(*q*) *Ex parte* Watkins, 8 Ch. 520; *In re* Matthews, 1 C. D. 501.

(*r*) Lingard *v.* Messiter, 1 B. & C. 308; Lingham *v.* Biggs, 1 Bos. & Pul. 384; *Ex parte* Lovering, L. R. 9 Ch. 621; *Ex parte* Brooks, 23 C. D. 261.

Sale Act, 1878 (*s*), or unless it is a well-known custom in the trade for goods of that description to be held on hire. And where there is no relation of vendor and purchaser, but the owner of chattels lets them to a trader who becomes bankrupt, the right of the owner as against the trustee in bankruptcy will still depend on whether such taking on hire is in accordance with notorious usage (*t*).

Ante-nuptial settlement of personal chattels supported against husband's bankruptcy.

A deed made before marriage whereby furniture or other chattels belonging either to the wife or the husband are assigned to a trustee in trust for the wife for her separate use is good against the trustee in bankruptcy of the husband, although at the date of the bankruptcy the goods are in the house in which they both reside (*u*), and the deed need not be registered, being excluded from the operation of the Bills of Sale Act, 1878. A similar deed made after marriage for valuable consideration is good, if registered; but not otherwise (*x*).

In order to come within the order and disposition clause the goods must be in bankrupt's possession with consent of true owner.

In order to confer on the trustee in bankruptcy a right to sell the goods under the order and disposition clause, they must be in the bankrupt's possession as reputed owner at the time of the bankruptcy, with the *consent* of the true owner. If therefore the real owner has withdrawn his consent and taken steps to take possession, even though he may not have succeeded owing to the refusal of the debtor to give them up or otherwise, the title of the trustee will be excluded (*y*). So also if the debtor has obtained possession of goods fraudulently, the right of the defrauded person to get them back is not defeated by the former's bankruptcy, unless the latter has known of the fraud for some time before the bankruptcy and delayed unreasonably to assert his right (*z*). In this

(*s*) Sect. 20.

(*t*) Horn *v.* Baker, 9 East, 215; Rufford *v.* Bishop, 5 Russ. 346; *Ex parte* Powell, 1 C. D. 501; Mullet *v.* Green, 8 Car. & P. 382; see *In re* Hill, 1 C. D. 503, n.

(*u*) Simmons *v.* Edwards, 16 M. & W. 838; see also Haselinton *v.* Gill, 3 T. R. 620; 1 R. & C. 666.

(*x*) Ashton *v.* Blackshaw, L. R. 9 Eq. 510; *Ex parte* Cox, 1 C. D. 302.

(*y*) Smith *v.* Topping, 5 B. & Ad. 674; *Ex parte* Harris, L. R. 8 Ch. 48; *Re* Eslick, 4 C. D. 496; Taylor *v.* Eckersley, 5 C. D. 740.

(*z*) Load *v.* Green, 15 M. & W. 216; 15 L. J. Ex. 113.

respect there is an important difference between the "apparent possession" mentioned in the Bills of Sale Act, 1878, and "order and disposition" under the Bankruptcy Act.

Property held by bankrupt in trust excepted from Bankruptcy Act.

Property held by the bankrupt in trust for any other person is expressly exempted from the Bankruptcy Act (*a*).

Order and disposition clause does not apply where possession is obtained or demanded without notice between act of bankruptcy and receiving order.

Whenever possession is obtained, or demanded, between the act of bankruptcy of the debtor, and the date of the receiving order without notice on the part of the grantee of such act of bankruptcy, the order and disposition clause of the Bankruptcy Act will not apply, as such possession or demand would be a dealing with the bankrupt within the meaning and protection of the 49th section (*b*). And the owner may avail himself of this clause, although he may have been informed before taking possession that an act of bankruptcy is in contemplation (*c*).

Voluntary settlement.

Provision as to voluntary settlements made by settlor.

It has been already stated that under the Act 13 Eliz. a voluntary disposition of property of whatever nature is void against creditors under certain circumstances. It is further provided by the Bankruptcy Act, 1883 (*d*), that any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser (*e*) or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or the children of the settlor of property, which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt *within two years* after the date of such settlement, be void against

(*a*) 32 & 33 Vict. c. 71, s. 15.
(*b*) See Brewin *v.* Short, 5 E. & B. 227; Graham *v.* Furber, 14 C. B 134.
(*c*) *Re* Wright, 3 C. D. 70.
(*d*) Sect. 47.
(*e*) The word "purchaser" in this section means a buyer in the ordinary commercial sense, and not a purchaser in the strict legal sense. *Ex parte* Hillman, 10 C. D. 622.

the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within *ten* years after the date of such settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property (*f*) comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. And the term "settlement" for the purposes of this section includes any conveyance or transfer of property.

IV. *The proper mode of framing a bill of sale by way of mortgage.*

The principal points to be attended to in the preparation of a bill of sale by way of mortgage are (1) that the consideration is properly set forth (*g*), and (2) that the instrument is in accordance with the form in the schedule to the Act of 1882 (*h*).

What is a sufficient setting forth of the consideration.

With respect to the consideration it has been decided (1), that money in fact owing from the mortgagor to the mortgagee may be properly stated as a sum of money then advanced and paid, it not being necessary that the form should be gone through of first paying off the debt and then readvancing the money (*i*); (2), that if the money expressed to be paid, or a part of it, is in fact, by the direction of the mortgagor, applied in payment of actual debts then owing from him, this does not render the deed void (*k*); but (3), that if part of the money is retained by the mortgagee for interest or a bonus (*l*), or to pay some

(*f*) In estimating such property the goodwill of a business is not to be taken into account. *In re* Butterworth, 19 C. D 588.

(*g*) Thomas *v.* Searles, Q. B. 408.

(*h*) See p. 740, *infra*.

(*i*) Credit Co. *v.* Pott, 6 Q. B. D. 295; *Ex parte* Mercantile Bank 15 C. D. 42; *Ex parte* Bolland, 21 C. D. 543.

(*k*) Hamlyn *v.* Betteley, 5 C. P. D. 327.

(*l*) *Ex parte* Charing Cross, &c., Bank, 16 C. D. 35.

debt not yet due (*m*), or even to pay the expense of preparing the mortgage deed, that expense not being in fact a debt due at the time, but one which does not arise until after the mortgage is complete (*n*), the bill of sale is void.

Bill of sale by way of mortgage must be made in accordance with statutory form.

A bill of sale by way of mortgage must be made in accordance with the form given in the schedule to the Act of 1882. As to the meaning of the words, "in accordance with," it was laid down in one case that "Every bill of sale must be substantially like the form in the schedule. Nothing substantial must be subtracted from it, and nothing actually inconsistent must be added to it" (*o*), and in a more recent case *Bowen*, L.J., delivering the judgment of the full Court of Appeal, observed: "If but for section 9 the instrument as drawn would by virtue either of addition or omission have any legal effect which goes beyond or falls short of that which would result from the statutory form, then it is void. In order to be valid the bill of sale must produce not the like effect, but the same effect, *i.e.*, the legal effect, the whole legal effect, and nothing but the legal effect, as that of the statutory form" (*p*).

Points decided with respect to accordance with form.

In accordance with the above rules of interpretation the following points have been decided, viz.:—

1. The bill of sale must state a fixed principal sum and rateable interest, and nothing can be added to these. The interest must not be capitalized, or a bonus made payable (*q*), nor is it sufficient to fix a lump sum as payable for interest without mentioning the rate (*r*).

As to mode and time of payment of money.

But the principal money and interest may be made payable on a certain day, with a covenant, if it is not

(*m*) *Ex parte* Rolph, 19 C. D. 98; Richardson *v.* Harris, 22 Q. B. D. 268.

(*n*) *Ex parte* Firth, 19 C. D. 419. It is difficult to reconcile this decision with *In re* Challoner, 16 C. D. 260. See also *Ex parte* Carter, 12 C. D. 908; Hamilton *v.* Chain, 7 Q. B. D. 319.

(*o*) Davis *v.* Burton, 11 Q. B. D. 540.

(*p*) *In re* Barber, 17 Q. B. D. 259.

(*q*) Davis *v.* Burton, 11 Q. B. D. 537; *In re* Williams, 25 C. D. 656.

(*r*) Blankenstein *v.* Robertson, 24 Q. B. D. 543.

paid on that day, to pay interest thereon half-yearly until payment (*s*). So, also, the money may be made payable by instalments, and in that case a provision may be inserted to the effect that, if default is made in payment of one instalment, the whole amount then remaining unpaid shall become payable at once (*t*).

2. The money must not be made payable on demand (*u*).

What covenants and provisions may be inserted as necessary for maintenance of security.

3. Covenants to insure and pay the necessary premiums, and to deliver to the mortgagee the last receipt if required, to replace and repair articles which may be destroyed, injured, or deteriorated; not to remove chattels without mortgagee's consent; to pay rent, rates and taxes, are covenants necessary for maintaining the security, and therefore authorized by the statutory form. So also provisions enabling the mortgagee to seize and take possession in case of the nonperformance of any such covenants are valid (*x*). So are provisions enabling a mortgagee to add to the security, and retain out of the sale moneys any sums expended by him in insurance, or in payment of rent, rates or taxes, by reason of the mortgagor's neglect to do so (*y*); or the expenses incurred by him in or about the sale, or in seizing or taking possession of the chattels, or in defending or maintaining the security (*z*). So also is a provision enabling the mortgagee to break open doors and windows for the purpose of seizing and taking possession (*a*).

4. The insertion in a bill of sale of covenants agreed to by the parties for the maintenance of the security, but which are not necessary for that purpose within the meaning of sect. 7 of the Act, will invalidate the deed, if a power is given to the mortgagee to seize

(*s*) Watkins *v.* Evans, 18 Q. B. D. 386; *In re* Cleaver, 18 Q. B. D. 489.

(*t*) Lumley *v.* Simmons, 34 C. D. 698.

(*u*) Hetherington *v.* Groome, 13 Q. B. D. 789; Sibley *v.* Higgs, 15 Q. B. D. 619.

(*x*) Hammond *v.* Hocking, 12 Q. B. D. 291; Furber *v.* Cobb, 18 Q. B. 494; *In re* Cleaver, *ubi supra.*

(*y*) Goldstrom *v.* Tallerman, 18 Q. B. D. 1.

(*z*) Lumley *v.* Simmons, 34 C. D. 698.

(*a*) *Re* Morritt, 18 Q. B. D. 222; Lumley *v.* Simmons, *ubi supra.*

the goods for default in the performance of such covenants, but not otherwise (*b*).

Provisions which have been held to be not necessary for maintenance of security.

5. A provision enabling a mortgagee to retain out of the sale moneys any expenses incurred by him "in relation to this security," is too wide, and invalidates the deed (*c*), and also a provision enabling a mortgagee who was an auctioneer to retain a commission out of the sale moneys (*d*), and a provision exempting a purchaser from being bound or concerned to see whether default has been made (*e*), have been held to be fatal deviations from the statutory form.

Bill of sale by way of indemnity void.

6. A bill of sale given to a surety by way of security for money which he may be called upon to pay under a guarantee given by him is void, as not being in accordance with the statutory form (*f*).

The words "as beneficial owner" invalidate the deed.

7. The introduction of the words "as beneficial owner" invalidates the deed on the ground that since the Conveyancing Act, 1881, they imply (*inter alia*) a covenant that in case of default the grantee may "enter into and upon or receive and thenceforth quietly hold, occupy, enjoy or take, and receive" the chattels assigned (*g*), and therefore confer on him by implication a right to remove and sell at once without waiting for the five days prescribed by the Act.

Chattels must be described in schedule.

8. The chattels must be described in the schedule, and not in the body of the deed (*h*).

Must not include other property.

9. A bill of sale is void if the schedule includes any property besides chattels, *e.g.*, the mortgagor's interest in the farm where the chattels are (*i*).

Bill of sale not in accordance with form, altogether void.

A bill of sale not in accordance with the form is void altogether, so that no action could be brought upon the covenant to pay (*k*), but of course if there is

(*b*) Topley *v.* Corsbie, 20 Q. B. D. 350. In Davis *v.* Burton, 11 Q. B. D. 540, a bill of sale was held void because it contained a covenant to produce receipts for rates or taxes on demand in writing, "or otherwise," and a power to seize on breach of such covenant.

(*c*) Calvert *v.* Thomas, 20 Q. B. D. 204.

(*d*) Furber *v.* Cobb, 18 Q. B. D. 494.

(*e*) Blaiberg *v.* Beckett, 18 Q. B. D. 96.

(*f*) Hughes *v.* Little, 18 Q. B. D. 33.

(*g*) Sect. 7 (*c*). *In re* Barber, 17 Q. B. D. 259.

(*h*) Thomas *v.* Kelly, 13 App. Ca. 506, 520.

(*i*) Cochrane *v.* Entwistle, 25 Q. Q. B. D. 116.

(*k*) Davies *v.* Rees, 17 Q. B. D. 408.

an actual loan, the principal money might be recovered in a common action for money lent, with interest at the legal rate. And if personal chattels and other property are mortgaged by a deed not in accordance with the statutory form, it is good as to the other property comprised in it (*l*).

Bill of sale of after-acquired chattels prior to late Act.

Previously to the late Act, it was a common practice to include in a bill of sale not only particular chattels in the grantor's possession at the time, but also chattels to be subsequently acquired in substitution for or in addition to them.

Effect of licence to seize after-acquired goods at common law.

The only benefit which *at law* could be conferred on the donee under a bill of sale as to after-acquired effects was a power or licence to seize them whenever they came into possession, and the title of the donee was acquired by his actually obtaining possession under the licence; but such a power was revocable by the donor, and had no effect *at law* as against persons claiming under any subsequent assignment from him, which might be executed before the donee had obtained actual possession of them (*m*).

A bill of sale of after-acquired chattels, if specific, operated in equity as a contract, and passed the property, when acquired, to the grantee.

In equity, however, a deed made for valuable consideration, and purporting to assign chattels to be afterwards acquired, and so described as to be capable of being identified, operated as a contract which fastened on the goods directly they came into the grantor's possession, and of which specific performance would be enforced. The instrument therefore in equity passed the property in the goods, when acquired, to the grantee (*n*).

A second bill of sale made for valuable consideration without

But as the assignment was good in equity only, it followed that if the grantor made a second bill of sale after the goods came into his possession, in

(*l*) *In re* Burdett, 20 Q. B. D. 310.

(*m*) Carr *v.* Acraman, 11 Exch. 566; Congreve *v.* Evetts, 10 Exch. 298; Thompson *v.* Cohen, L. R. 7 Q. B. 527.

(*n*) Holroyd *v.* Marshall, 10 H. L. C. 191; Clements *v.* Matthews, 11 Q. B. D. 808; *In re* Clarke, 36 C. D. 348. The Court in the latter case disapproved of Belding *v.* Read, 34 L. J. Ex. 212. The same principle applies to other property besides chattels. Thus, an assignment of future book debts, though not limited to book debts in any particular business, would be good. (See Tailby *v.* Official Receiver, 13 App. Cas. 523).

notice, after the goods have been acquired, would have priority. *Semble.*

favour of a purchaser or mortgagee for valuable consideration without notice of the first one, the second grantee would have priority over the first, by virtue of the equitable doctrine that where two persons have equal equities the legal title will prevail (*o*). It makes no difference in this respect that since the passing of the Judicature Act equitable interests are recognized by all branches of the Court (*p*).

Act of 1882 prohibits in effect a mortgage of after-acquired chattels.

What has been above stated as to the operation and effect of an assignment of after-acquired chattels is still applicable to a bill of sale not coming within the Act of 1882; but the effect of that Act, according to the judgment of the House of Lords in a recent case (*q*), is to prohibit altogether and render void a bill of sale by way of security of after-acquired chattels, except such as are described in sub-sect. 2 of sect. 6.

Statutory form should be followed exactly.

The only safe course to take in the preparation of a bill of sale is to follow the statutory form without variation, except in those particulars in which the form itself expressly allows one.

(*o*) Lazarus *v.* Andrade, 5 C. P. D. 318; Joseph *v.* Lyons, 15 Q. B. D. 280; Hallas *v.* Robinson, 15 Q. B. D. 288.

(*p*) The observation of Lopes, J., in Lazarus *v.* Andrade, 5 C. P. D. 320, that "property to be afterwards acquired may be, not only in equity, but also at law, the subject-matter of an assignment for value, must be understood as merely meaning that the validity of such an assignment must now be recognized by every branch of the Court."

(*q*) Thomas *v.* Kelly, 13 App. Ca. 506.

No. I.

ASSIGNMENT *of* PERSONAL CHATTELS *to a* PURCHASER (*a*).

OF CHATTELS TO PURCHASER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration of the sum of £—— paid by the said C. D. to the said A. B. on or before the execution of these presents, by way of purchase-money (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby assigns unto the said C. D. ALL the furniture and household effects in and about the messuage or dwelling-house situate at, &c. (*describing it*), which furniture and effects are now in the possession of the said A. B., who is the tenant of the said dwelling-house, until the —— day of —— next, TO HOLD the same unto the said C. D. from and after the determination of the tenancy of the said A. B. absolutely.

Parties.

Consideration.

Assignment by vendor to purchaser.

IN WITNESS, &c.

Signed, sealed, and delivered by the within-named A. B. in the presence of L. M. of, &c., a solicitor of the Supreme Court of Judicature, the effect of the within-written indenture having been first explained to the said A. B. by the said L. M. (*b*).

(*a*) An assignment of chattels to a purchaser is unusual, as they are generally delivered to him, but cases may happen in which immediate possession cannot be conveniently given. This deed will require to be registered under the Act of 1878.

(*b*) See Act of 1878, s. 10.

No. II.

OF FURNITURE, ETC., BY WAY OF GIFT.

ASSIGNMENT *of* FURNITURE *and* HOUSEHOLD EFFECTS *by a* HUSBAND *to his* WIFE *by way of* GIFT (*c*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*husband*), of the one part, and C. B., the wife of the said A. B., of the other part: WITNESSETH that the said A. B., in consideration of his love and affection for the said C. B., his wife, hereby assigns unto her ALL the furniture, plate, china, linen, books, and other household effects in and about the messuage or dwelling-house situate at, &c., in which they, the said A. B. and C. B., reside: TO HOLD the same unto the said C. B. absolutely.

Husband assigns furniture to his wife absolutely.

IN WITNESS, &c.

Signed, sealed, &c. (*as in No. I.*)

No. III.

OF CHATTELS BY WAY OF MORTGAGE.

BILL *of* SALE *of* CHATTELS *by way of* MORTGAGE, *being the* STATUTORY FORM.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £—— now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), (*or whatever else the consideration may be*), the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns, ALL and singular the several chattels and things specifically described in the schedule hereto annexed, by way of security for the payment of the sum of £—— and interest

Assignment of chattels to mortgagee to secure payment of principal money and interest.

(*c*) This deed should be attested and registered under the Act of 1878.

thereon at the rate of £—— per cent. per annum (*or whatever else may be the rate*): And the said A. B. doth agree that he will pay to the said C. D. the principal sum aforesaid, together with the interest then due, on the —— day of —— next (*or whatever else may be the stipulated times or time of payment*): And the said A. B. doth also agree with the said C. D. that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*): Provided always, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

OF CHATTELS BY WAY OF MORTGAGE.

Agreement by mortgagor to pay principal money and interest.

Chattels to be liable to seizure for causes specified in sect. 7.

In witness, &c.

The Schedule above referred to.

Signed and sealed by the within-named A. B. in the presence of me,

E. F. (*add witness's name, address, and description*).

No. IV.

BILL *of* Sale *of* Chattels *by way of* Mortgage, *being the* Statutory Form *with the blanks filled up.*

OF CHATTELS BY WAY OF MORTGAGE.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £—— (*a*) now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby

(*a*) This must not be less than £30. If the consideration is an antecedent debt, say, in consideration of the sum of £—— now owing from the said A. B. to the said C. D.

OF CHATTELS BY WAY OF MORTGAGE.

Assignment of chattels to mortgagee to secure payment of principal money and interest.

Agreement by mortgagor to pay principal money and interest,

to insure against fire;

to pay rent, rates, and taxes, and produce receipts.

acknowledges), the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL and singular the several chattels and things specifically described in the schedule hereunto annexed by way of security for the payment of the sum of £——, and interest thereon after the rate of £—— per cent. per annum: AND the said A. B. doth agree that he will pay to the said C. D. the principal sum aforesaid, together with the interest then due, on the —— day of —— next, and if the said principal sum is not paid on that day, then will pay interest thereon, or on so much thereof as shall for the time being remain owing after the rate aforesaid, half-yearly, on the —— day of ——, and the —— day of —— (*c*). AND the said A. B. doth also agree with the said C. D. that he will at all times during the continuance of this security keep the said chattels and things insured against loss or damage by fire, in the sum of £—— at least, in the —— Insurance Office, or in some other insurance office to be approved of by the said C. D., his executors, administrators, or assigns (*d*); and also duly and regularly pay the rents, rates, and taxes payable by him in respect of the said messuage or dwelling-house; and also will produce to the said C. D., his executors, administrators, or assigns, upon demand in writing, the last receipt for such rent,

(*c*) If the money is to be paid by instalments, the following form of covenant may be substituted:

And the mortgagor hereby agrees and declares that he will pay to the mortgagee the said principal sum of £——, by equal monthly instalments of £—— each, the first instalment to be paid on the 1st day of —— next, and the remaining instalments to be paid on the first day of every subsequent calendar month until the whole principal money shall be paid, and also will on the same monthly days respectively pay to the mortgagee the interest then due on the principal sum for the time being remaining unpaid: PROVIDED ALWAYS, that if any monthly instalment shall be in arrear for 14 days, the whole of the principal money then remaining unpaid shall become payable immediately.

(*d*) Sect. 19, sub-sect. 2, and sect. 23 of the Conveyancing Act, 1881, apply to personal chattels such as are the subject of this bill of sale, so that a provision enabling the mortgagee to insure in case of the mortgagor's default is unnecessary.

rates, or taxes, and the policy of such insurance as aforesaid and the receipt for the last premium payable in respect thereof, unless he shall have a reasonable excuse for not doing so: PROVIDED ALWAYS (*e*), that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

Chattels to be liable to seizure for causes specified in sect. 7.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO (*f*).

Signed and sealed by the within-named A. B. in the presence of me,

E. F. (*add witness's name, address, and description*).

(*e*) A power to seize and take possession, and to sell after five days, may be conferred in express terms. (See *In re* Morritt, 28 Q. B. D. 222; Calvert *v.* Thomas, 19 Q. B. 204; Lumley *v.* Simmons, 34 C. D. 698.) But it is unnecessary to do so, as these powers are conferred by sects. 7 and 13 of the Act by implication.

(*f*) The schedule should contain a specific description of the chattels. As to what is a sufficient specific description, (See Witt *v.* Banner, 20 Q. B. 114; Carpenter *v.* Dean, 23 Q. B. D. 506; and Hickley *v.* Greenwood, 25 Q. B. 277) in which it was held that "450 pictures in gilt frames," and "twenty-one milch cows," was not sufficient, but, "roan horse Drummer, brown mare and foal, three trade carts," was sufficient. If the bill of sale is of growing crops they should be described in the schedule, and not in the body of the deed, thus:

All the crops of grass, wheat, and barley, and other crops now growing in or upon the farm and lands called ——, situate, &c., now in the occupation of the mortgagor.

If it is intended to include in the bill of sale fixtures, plant, or machinery to be substituted for the existing fixtures, &c., the following words should be added in the schedule after the specific description of the existing things:

And also all the fixtures, plant, and trade machinery which may at any time hereafter during the continuance of this security be erected on, or attached to, or brought upon the said —— (*house or land*), in substitution for any of the like fixtures, plant, and trade machinery above specifically described.

No. V.

MEMORANDUM OF SATISFACTION ON BILL OF SALE.

MEMORANDUM *of* SATISFACTION INDORSED *on a* BILL *of* SALE.

MEMORANDUM that all the money secured by the within-written deed has been satisfied.

(Signed) C. D.

WITNESS, &c.

No. VI.

CONSENT TO ORDER OF SATISFACTION.

CONSENT *by* GRANTEE *of* BILL *of* SALE *to an* ORDER *to enter* SATISFACTION.

In the High Court of Justice.
Queen's Bench Division.

I, C. D. of, &c., DO HEREBY consent to an order that a memorandum of satisfaction be written upon the copy of the bill of sale given to secure the sum of £—— and interest bearing date the —— day of ——, 18—, made between A. B. of the one part and me of the other part, and filed on the —— day of ——, 18—, the debt for which the said bill of sale was given as a security having been satisfied. Dated the —— day of ——, 18—.

(Signed) C. D.

No. VII.

AFFIDAVIT PURSUANT TO ACT OF 1882.

AFFIDAVIT *to be* FILED PURSUANT *to* BILLS *of* SALE ACT *of* 1882.

In the High Court of Justice.

—— Division. 18— No.

I, L. M. of ——, in the county of ——, make oath and say, as follows:—

1. The paper writing hereunto annexed and marked A is a true copy of a bill of sale, and of the schedule or inventory thereto annexed or therein referred to, and of the [*or* every, *if there are two attesting witnesses*] attestation of the execution thereof, as made and given and executed by A. B.

2. The said bill of sale was made and given by the said A. B. on the —— day of ——, 18—.

3. I was present, and saw the said A. B. duly execute the said bill of sale on the said —— day of ——, 18—.

4. The said A. B. resides at, &c. (*state residence at time of swearing affidavit*), and is, &c. (*state occupation*).

5. The name L. M. subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in my proper handwriting (*a*).

6. I reside at —— in the county of ——, and am (*occupation*).

SWORN, &c. (*b*).

(*a*) *If there are two attesting witnesses, substitute for paragraph* 5:—

5. The names L. M. and G. H. subscribed as witnesses attesting the execution of the said bill of sale are respectively in the handwriting of me and of the said G. H. I reside at ——, and am ——, and the said G. H. resides at ——, and is a grocer.

Occupation of assignor and attesting witnesses must be stated in affidavit.

(*b*) The affidavit to be filed with the bill of sale must state the residence and occupation of the assignor and every attesting witness. "Gentleman," is not a sufficient description of a solicitor or of a solicitor's clerk (Tuton *v.* Sanoner, 4 Jur. N. S. 365; 27 L. J. Ex. 293; Dryden *v.* Hope, 9 W. R. 18), or of a clerk in the audit office (Allen *v.* Thomson, 2 Jur.

Cases of insufficiency of description.

N. S. 45), or of any person having a fixed profession, business, or avocation (Adams *v.* Graham, 33 L. J. Q. B. 71; Beale *v.* Tenant, 6 Jur. N. S. 628); but it is not necessary to mention an avocation which has only been temporarily or casually followed, or one in which he is not at present actively engaged, being out of employment. (Brodrick *v.* Scale, L. R. 6 C. P. 98; Smith *v.* Cheese, 1 C. P. D. 60; Morewood *v.* South Yorkshire Co., 28 L. J. Ex. 114.) A lessee and manager of a theatre, or a merchant, is not properly described as "esquire" (*Ex parte* Hooman, L. R. 10 Eq. 63; *Re* O'Connor, 27 L. T. 27); nor a clerk in an accountant's department as an "accountant." (Larchin *v.* North Western Deposit Bank, L. R. 8 Exch. 80.) On the other hand, a clerk in the Admiralty has been held to be sufficiently described as a government clerk (Grant *v.* Shaw, L. R. 7 Q. B. 700); and a grantor who has been in business until a few weeks before the bill of sale and was then in treaty for another business, was held to be properly described as widow. (See *Re* Esther Davey, W. N. 1881, pp. 56, 109.)

Residence within meaning of Act.

The residence meant by the Act is the place where the person carries on business and can be found during the day, not the place where he merely sleeps at night. (Attenborough *v.* Thompson, 3 Jur. N. S. 1307; Blackwell *v.* England, 8 El. & Bl. 541; Briggs *v.* Moss, L. R. 3 Q. B. 268; Hewer *v.* Cox, 30 L. J. Q. B. 73; Blount *v.* Harris, 4 Q. B. D. 603.) Where a house is in a street, the No. must be accurately stated (Murray *v.* Mackenzie, L. R. 10 C. P. 625); but if the description given is such as cannot mislead creditors, an unimportant mistake will not be fatal, as where New Street, Blackfriars, was stated as in the county of Middlesex instead of in the city of London. (Hewer *v.* Cox, 30 L. J. Q. B. 73; *Ex parte* M'Hattie, 10 Ch. D. 398.)

Description of company.

A description of the residence of the attesting witness in the introductory part of the affidavit is sufficient. (Blaiberg *v.* Parke, 10 Q. B. D. 90.)

Affidavit must contain the description either expressly or by reference.

An affidavit filed with a bill of sale, describing a company by its name, and stating the address of its principal office, is a sufficient compliance with the Act. (Shears *v.* Jacob, L. R. 1 C. P. 513.)

It is not sufficient that the bill of sale contains a description of the residence and occupation of the assignor and the attesting witnesses: the affidavit filed with the bill of sale must contain such description also, either expressly or by reference. Thus it is not sufficient to state in the affidavit that the grantor is the person named in the bill of sale unless it be averred that he is truly described therein. (Hatton *v.* English, 7 El. & B. 94; 26 L. J. Q. B. 161; Pickard *v.* Bretts, 29 L. J. Ex. 18; see also Wilcoxon *v.* Searby, 29 L. J. Ex. 154.)

Description of residence of grantor.

The description of the residence of the grantor to be stated in the affidavit should be his residence at the time of swearing the affidavit, and not at the time of executing the bill of sale. (Button *v.* O'Neill, 4 C. P. D. 354.) But in a case where between the date of the execution of the bill of sale and the date of the affidavit, the maker left his residence and sailed for America, it was held that the affidavit which described him as in the bill of sale was sufficient. (*In re* Hewer, 21 Ch. D. 571.)

Affidavit must state that attesting witness was present.

The affidavit must also state that the attesting witness was present at the time of the execution by the grantor and witnessed the due execution by him. (Ford *v.* Kettle, 9 Q. B. D. 139; Sharpe *v.* Birch, 8 Q. B. D. p. 111.)

Where there are two residences.

If the grantee lives and carries on business at A., and has also other places of business, he is sufficiently described in the affidavit as residing at A., without any mention of the other places. (Greenham *v.* Child 24 Q. B. D. 29.)

Affidavit on re-registration.

The affidavit made on the re-registration of a bill of sale must correspond with that made on the original registration. (*Ex parte* Webster, 22 Ch. D. 136.)

No. VIII.

AGREEMENT *accompanying a* PLEDGE *of* CHATTELS *to secure a* DEBT (*a*). SECURITY BY WAY OF PLEDGE.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*pledgor*), of the one part, and C. D. of, &c. (*pledgee*), of the other part: WHEREAS the said C. D. has this day lent to the said A. B. the sum of £——, and the said A. B. has deposited with the said C. D. the chattels mentioned in the schedule hereto: NOW IT IS HEREBY AGREED between the parties hereto as follows:— Parties. Recite loan and deposit of chattels with lender. Agreement

1. THE said A. B. shall on the —— day of —— next, pay to the said C. D. the sum of £—— with interest thereon after the rate of £—— per cent. per annum, computed from the day of the date of these presents, and if the said sum shall not be paid on that day the same shall continue to bear interest after the rate aforesaid until paid off. by borrower to pay loan with interest.

2. THE said C. D. shall retain the chattels deposited with him as aforesaid as a pledge for the payment of the said debt and interest, and if default shall be made in payment of the said debt and interest on the said —— day of —— next, the said C. D. may at any time thereafter sell the said chattels or any of them either by public auction or private contract, with liberty to buy in at any sale by auction, and to rescind or vary any contract for sale, and to re-sell without being answerable for any loss arising thereby: And the said C. D. shall, with and out of the proceeds of such sale, in the first place pay and retain all costs and expenses incurred by him in or about any such sale or attempted sale, or otherwise in relation to this security, and in the next place pay and retain all moneys owing to them under this agreement, and shall pay the surplus (if any) to the said A. B. Chattels to be a pledge for repayment, and pledgee to have power to sell in case of default. Trusts of sale money.

3. THE said C. D. shall be at liberty if he thinks fit to insure the said chattels, or any of them, against loss or damage by fire, Pledgee to be at liberty to insure

(*a*) This is not a bill of sale, and does not require registration. (*Ex parte* Hubbard, 17 Q. B. D. 690.)

SECURITY BY WAY OF PLEDGE.

and all money expended by him in or about such insurance shall be repaid to him on demand by the said A. B. with interest thereon after the rate aforesaid computed from the time of expending the same, and the same shall also be payable out of the proceeds of the sale of the said chattels in like manner as the said debt of £—— and the interest thereof.

against fire and to be repaid expense of insurance.

Pledgee not to be answerable for injury to chattels.

4. The said C. D. shall not be answerable for any loss or injury to the said chattels during the continuance of this security, unless the same shall arise from his own wilful act or default.

5. The powers hereby conferred on the said C. D. shall be exerciseable by his executors, administrators, or assigns.

As witness the hands of the parties hereto.

The Schedule above referred to.

ARRANGEMENTS WITH CREDITORS.

Arrangements with creditors.

Arrangements by a debtor with his creditors may be conveniently divided into—(1) those made without proceedings in bankruptcy, which may be called private arrangements, and (2) those made with the sanction and subject to the control of the Court after proceedings in bankruptcy have been commenced.

As to Private Arrangement Deeds.

Private arrangement deeds.

Under the Bankruptcy Act, 1869, and previous Acts, a private arrangement assented to by a certain majority in number and value of the creditors, and made in accordance with conditions prescribed by statute, was binding on the remaining creditors, though they might dissent. The law in this respect is altered by the Act of 1883, and as the law now stands, a private arrangement binds only those creditors who assent to it.

As law now stands, cannot be made to bind dissentient creditors.

Assignment of all the debtor's property for benefit of creditors, an act of bankruptcy.

Private arrangements ordinarily (though not always) take the form of an assignment of the whole or the bulk of the debtor's property to trustees for division among the creditors. Such an assignment is itself an act of bankruptcy, and any creditor may, instead of coming in under it, make it the ground of a petition for adjudication, provided that his petition is presented within three calendar months after the execution of the deed. Adjudication avoids the assignment, and the debtor's property will vest in the trustee in bankruptcy, and be distributable by him according to the law of bankruptcy.

Sometimes the creditors are willing to accept a composition unaccompanied by a *cessio bonorum*, and in

such cases the composition is generally made payable by instalments, and secured by a joint and several covenant of the debtor and a surety, or by joint and several promissory notes given by them.

Private arrangement deeds must be registered.

By a recent Act (*b*) all instruments made after the 1st January, 1888, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the bankruptcy laws), that is to say, an assignment of property, a deed of or agreement for a composition, a deed of inspectorship, letter of licence, and any agreement or instrument for carrying on or winding up the debtor's business, are required to be registered in the manner provided by the Act within seven clear days after the first execution thereof by the debtor or any creditor, or if executed abroad within such further time as therein mentioned. Every such deed must also be duly stamped with the proper inland revenue duty, and also with a stamp denoting a duty at the rate of one shilling for every 100*l.* of the sworn value of the property passing, or (where no property passes) the amount of composition payable under the deed.

The execution of a deed of arrangement by other creditors and the insertion of their names with the amount of their debts in a schedule after the deed is registered does not invalidate the registration (*c*).

As to Compositions under the Bankruptcy Act.

Schemes of arrangement under Bankruptcy Act.

The Bankruptcy Act, 1883, sect. 19, authorizes the creditors, at a meeting, by special resolution to entertain a proposal for a composition, or a scheme of arrangement of the debtor's affairs, and the composition or scheme, if confirmed by a resolution passed at a subsequent meeting by a majority in number representing three-fourths in value of all the creditors, and approved by the Court, is binding on all the creditors.

(*b*) 50 & 51 Vict. c. 57. (*c*) *In re* Batten, 22 Q. B. D. 685.

No. I.

ASSIGNMENT *by a* DEBTOR *of all his* PERSONAL ESTATE *to* TRUSTEES *for the benefit of his* CREDITORS (*a*).

OF PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*debtor*), of the first part, C. D. of, &c., and E. F. of, &c. (hereinafter called "the trustees"), of the second part, and the several persons and firms, creditors of the said A. B., who or whose attorneys or agents (*b*) on their behalf execute or otherwise accede to these presents, of the third part.

Parties.

WHEREAS it has been agreed between the said A. B. and his creditors that such arrangement shall be made as is hereinafter expressed: AND WHEREAS the said A. B. has furnished a statement of his affairs to the trustees, and from such statement it appears that his property consists of the particulars set forth in the first schedule hereto: AND WHEREAS the names of the creditors and of the amounts owing or claimed to be owing to them respectively, are inserted or intended to be inserted in the second schedule hereto: NOW THIS INDENTURE WITNESSETH, as follows:

Recital of agreement for arrangement; that debtor has furnished statement of his affairs to trustees.

Witnessing part.

1. IN consideration of the release hereinafter contained the said A. B., as beneficial owner, hereby assigns unto the trustees All the personal property of the said A. B. mentioned in the first part of the first schedule hereto: TO HOLD the same unto the trustees upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Debtor assigns personal property to trustees.

AND IT IS HEREBY AGREED AND DECLARED as follows:

2. THE trustees shall sell, call in, and convert into money the premises hereby assigned, at such times and in such manner as they shall think fit, and shall, with and out of the moneys to arise thereby, in the first place pay and retain all costs, charges, and expenses of and incidental to the preparation and execution of these presents and the negotiations preparatory hereto, and all costs, charges, and expenses of and incidental to

Trust for sale and conversion, and to pay (1) costs and expenses of arrangement;

(*a*) This deed must be registered under the Deeds of Arrangement Act, 1887, but as it does not comprise any land it need not be registered under the Land Charges Registration and Searches Act, 1888.

(*b*) Includes one member of a firm signing on behalf of the firm.

OF PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

the execution of the trusts and powers of these presents: And shall in the next place pay in full all those debts of the said A. B. which by Section 1 of the Preferential Payments in Bankruptcy Act, 1888 (*b*), are directed to be paid in priority to other debts: And shall divide the residue of the said moneys among the parties hereto of the third part rateably according to the amount of their respective debts, in like manner as if the said A. B. had been adjudged a bankrupt on the day of the date of these presents, and so that all debts which would have been proveable against the estate of the said A. B. in bankruptcy shall be proveable in like manner against his estate under these presents: And if the said moneys shall be more than sufficient to pay the said debts in full, they shall pay the ultimate surplus to the said A. B.

(2) preferential debts in full;

(3) divide residue among creditors rateably;

and pay over surplus (if any) to debtor.

Power to postpone sale and conversion, and to manage business in meantime.

3. The trustees may postpone the sale and conversion of any part of the said premises hereby assigned for so long as they shall think fit, and may in the meantime carry on and manage the business of the said A. B., and may employ the said A. B. in and about the management and winding up thereof, and may allow him any reasonable remuneration for his trouble therein. And all moneys received by the trustees in respect of the profits of the said business or otherwise from the said trust premises shall be applicable in like manner as the trust moneys mentioned in Article 2.

Trustees to have power to require evidence of alleged debts,

and to compromise, &c.

4. The execution of these presents by any person claiming to be a creditor of the said A. B., and the insertion in the second schedule hereto of the amount supposed or claimed to be owing to him, shall not preclude the trustees from questioning the validity or amount of the alleged debt, or from requiring such evidence thereof as they may think fit. And the trustees may compromise or submit to arbitration or otherwise settle any debt claimed to be due and owing from the said A. B., and any difference or dispute which may arise between them and any person whomsoever respecting the trust estate or any claim or demand thereon.

Debtor to furnish accounts to trustees if required.

5. The said A. B. shall from time to time furnish to the trustees such further statements and accounts of his property, and of his debts and engagements, and of all particulars re-

(*b*) 51 & 52 Vict. c. 62.

lating thereto, together with such evidence in verification of such statements and accounts as they shall require.

OF PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

6. If it shall hereafter appear (*c*) that the said A. B. has, at the date of these presents, any property to the value of £10 or upwards not included in the first schedule hereto, all such property shall, at the request of the trustees, and at the cost of the trust estate, be forthwith conveyed and assigned, or otherwise made over by the said A. B. unto the trustees, to be held by them upon the same trusts as are hereinbefore declared of and concerning the property hereby assigned, or as near thereto as the circumstances will permit.

Debtor to convey real and leasehold property (if any) to trustees.

7. In consideration of the premises, the parties hereto of the third part hereby release the said A. B. from all debts, claims, and demands whatever, subject nevertheless to the provisions hereinafter contained (*d*).

Release by creditors.

8. Nothing herein contained shall prejudice any right or remedy which any creditor may have against any person (*e*) other than the said A. B., nor prejudice or affect any mortgage, lien or security which any creditor may have on any property of the said A. B. or of any other person; but a creditor holding any mortgage, lien or security on any property of the said A. B. shall be entitled to receive a dividend in respect only of the amount of the debt owing to him after realising or giving credit for the value of such mortgage, lien or security, in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy; and if the trustees and the secured creditors shall be unable to agree as to the value of the security, the value thereof shall be referred to

Release not to prejudice securities or remedies against third persons, but creditor to be entitled to dividend on amount of debt after realizing or giving credit for value of securities.

(*c*) Sometimes the deed purports to assign not only the specified property, but also all other the debtor's estate and effects. But as such a general description might pass property more conveniently dealt with by a separate instrument, *e.g.* real estate, leaseholds with onerous covenants, shares in companies, moneys owing on mortgages, &c.—a covenant as above seems a more convenient plan.

(*d*) If the deed is avoided as an act of bankruptcy, and the debtor is made a bankrupt, this release is avoided also, and the executing creditors may prove in the bankruptcy. (*In re* Stephenson, 20 Q. B. D. 540.)

(*e*) A release given to the principal debtor discharges the surety also, unless the right to sue the latter is expressly reserved. In the case of such reservation, the surety if made to pay can proceed against the principal debtor to be indemnified, notwithstanding the release, or he may, if he pleases, come in for a dividend under the arrangement, in the place of the creditor whom he has paid, in which case he will be bound by the release. (*In re* Whitehouse, 37 C. D. 683.)

OF PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

two arbitrators, one to be appointed by each party, and in case of their disagreement, to an umpire to be appointed by the arbitrators before they proceed to business.

Trustees to have power to avoid the deed if any creditor refuses to accede.

9. If any creditor or creditors whose debt or debts together amount to £—— over and above the value of any security or securities held by him or them, shall refuse or decline to execute or accede to these presents, then and in such case it shall be lawful for the trustees, if they so think fit, to declare by writing under their hands, that the presents shall be void, and thereupon the same shall be void accordingly, and the said trust premises shall be re-assigned and restored to the said A. B.

Disputes to be settled by creditors at a meeting.

10. If (*f*) any difficulty or question shall arise in the execution of the trusts of these presents which the trustees may wish to refer to the creditors, they may call a meeting of the creditors for that purpose, to be held at such time and place as they shall appoint, and any resolution passed at such meeting by a majority in value of the creditors present and voting thereat, in reference to the matter referred to them, shall bind all the other creditors.

Power to appoint new trustees.

11. The power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall apply to these presents [and be exerciseable by the surviving or continuing trustee or trustees for the time being, or the personal representatives of the last surviving or continuing trustee: Provided always, that whenever a vacancy shall occur in the trusteeship, the person or persons in whom the statutory power shall be vested (hereinafter called "the donee or donees of the power") shall call a meeting of the parties hereto of the third part, at such time and place as he or they shall appoint, which meeting shall, by a majority in value of the creditors present and voting thereat, choose the trustee or trustees to supply the vacancy, and the donee or donees of the power shall appoint the person or persons so chosen; and the statement in the deed by which the donee or donees of the power appoint the new trustee or new trustees, that such new trustee or new trustees has or have been duly chosen at a meeting of creditors as aforesaid, shall be conclusive evidence of the fact so stated, in favour of any purchaser or other person deriving title to any part of the trust

(*f*) Articles 12, 13, 14, in Precedent No. II., may be substituted for Articles 10, 11, 12, in the above Precedent, if desired.

OF PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

estate under these presents] (*g*); And all trusts and powers hereby reposed and vested in the trustees may be exercised by the survivor of them, or other the trustees or trustee for the time being appointed under the said statutory power.

How meetings to be called.

12. Any meeting of creditors hereby authorized to be called shall be summoned by sending a notice thereof through the post to each creditor or his agent at his usual or last known place of address in England or Wales, such notice to be posted fourteen days at least before the day of meeting.

In witness, &c.

The First Schedule above referred to.

The First Part (*property included in this assignment*).

1. The stock-in-trade, book-debts, credits, chattels, and effects belonging or owing to the said A. B. in connection with his business of ——, carried on at ——, and the goodwill of the said business.

2. The furniture and household effects (*h*) in and about the messuage or dwelling-house at ——, wherein the said A. B. resides, except what is comprised in the second part of this schedule.

(*Add any other particulars.*)

The Second Part (*property excluded*).

The wearing apparel of the said A. B. and of the members of his family.

(*Add any other particulars.*)

The Second Schedule above referred to.

Name of Creditor.	Amount of debt.

(*g*) The portion of this clause within brackets may be omitted where it is thought that the power may be safely left in the surviving trustee, &c., without a meeting of creditors.

(*h*) This deed does not require registration as a bill of sale. See 41 & 42 Vict. c. 31, s. 4. See also General Furnishing Co. *v.* Venn, 2 H. & C. 153; 32 L. J. Ex. 220.

No. II.

REAL AND PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

CONVEYANCE *and* ASSIGNMENT *by a* DEBTOR *of all his* REAL *and* PERSONAL ESTATE *to* TRUSTEES *for the* BENEFIT *of his* CREDITORS (*a*).

THIS INDENTURE, &c. (*parties and recitals as in Precedent No. I.*): NOW THIS INDENTURE WITNESSETH as follows:—

Debtor conveys and assigns freehold and leasehold property to trustees.

1. IN consideration of the release hereinafter contained, the said A. B., as beneficial owner, hereby conveys and assigns unto the trustees the freehold and leasehold hereditaments described in the first part of the first schedule hereto: TO HOLD the said freehold hereditaments unto and to the use of the trustees in fee simple, AND TO HOLD the said leasehold hereditaments unto the trustees for the residue now unexpired of the several terms of years subsisting therein, as in the said schedule is mentioned, subject to the rents reserved by the several leases under which the same are respectively held, and subject to the lessee's covenants in the same leases respectively contained: NEVERTHELESS as to all the said freehold and leasehold hereditaments upon the trusts hereinafter declared.

Covenant by debtor to assign leaseholds and transfer stocks, &c., to trustees.

2. FOR the consideration aforesaid the said A. B. hereby covenants with the trustees that he the said A. B. will, at the request of the trustees and at the cost of the trust estate [assign (*b*) the leasehold property described in the second part of the first schedule hereto unto the trustees for the unexpired residue of the several terms of years subsisting therein respectively, subject to the rents and lessee's covenants reserved by and contained in the leases thereof respectively, AND ALSO will, at the like request and cost], transfer or cause to be transferred the stocks and shares mentioned in the same second part of the said first schedule hereto into the names of the trustees:

(*a*) This deed must be registered under the Deeds of Arrangement Act, 1887, and the Land Charges Registration and Searches Act, 1888.

There is no advantage in having a separate conveyance of the real estate, because such separate conveyance would have to be registered, and the other deed could not be kept off the title.

(*b*) Where the lease contains onerous covenants the debtor should covenant to assign it, instead of making an actual assignment.

REAL AND PERSONAL ESTATE FOR BENEFIT OF CREDITORS.

And will in the meantime stand seised and possessed of the said [leasehold property] stocks and shares and the [rents, profits] dividends and income thereof, In trust for the trustees, their executors, administrators and assigns, to be held by them upon the trusts hereinafter declared concerning the same.

Debtor assigns personal property to trustees in trust to sell and convert.

3. For the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the trustees All the property described in the third part of the first schedule hereto, except what is comprised in the fourth part of the said schedule, To hold the same unto the trustees upon the trusts hereinafter declared concerning the same.

4. The trustees shall sell, call in, and convert into money the property comprised in the first, second, and third parts of the first schedule hereto, at such time or times and in such manner as they shall think fit, and shall, with and out of the moneys to arise thereby in the first place, pay, &c. (*as in Precedent No. I. Article 2*).

Power to postpone sale and conversion, and to manage property in meantime.

5. The trustees may postpone the sale and conversion of all or any part of the said property for so long as they think fit, and may manage any freehold or leasehold property remaining unsold, with liberty to expend money in repairs, insurance against fire, and other outgoings and expenses incidental to the management thereof, and may carry on and manage the business of the said A. B., and may employ the said A. B. in or about the management and winding up of the same, and may pay to him any reasonable remuneration for so doing. And all rents, profits, and other moneys received by the trustees in respect of the property or business, shall be applicable in like manner as the trust moneys mentioned in Article 4.

6—11. (*The same as Articles* 4—9 *in Precedent No. I.*)

Meetings of creditors to be called on requisition of a certain number or at discretion of trustees.

12. The trustees (*a*) may, whenever they think fit, and they shall if required so to do in writing by not less than one-fourth in value of the creditors, summon a general meeting of the creditors for the purpose of considering any matter connected with the estate of the said A. B. or the execution of the trusts of these presents. Every such meeting shall be summoned by a notice in writing specifying the day, place, and hour, and object of the meeting, which notice shall be sent through the post to

(*a*) As alternative clauses for 12, 13, 14, see Articles 10, 11, 12, in Precedent No. I.

TRUSTS FOR BENEFIT OF CREDITORS.

every creditor or his agent at his usual or last-known place of abode in England or Wales, and shall be posted fourteen days at least before the day of meeting.

What majority necessary to pass a resolution.

13. ANY resolution passed at a meeting summoned as aforesaid by a majority in number representing one-half at least in value of the creditors present and voting thereat, shall bind all the other creditors: And in particular such majority may by a resolution remove a trustee from office for any reason which may appear to them sufficient, and may appoint a trustee or trustees either in addition to any acting trustee or trustees for the time being, or in the place of any trustee or trustees who may have died or shall be desirous of resigning office, or shall have been removed from office as aforesaid; and every additional or new trustee may act in the execution of the trusts and powers of these presents as fully and effectually as if he had been hereby appointed a trustee. And upon every such appointment such deeds and things shall be executed and done by all persons in whom the trust property or any part thereof shall be vested, as shall be necessary or proper for giving effect thereto.

Power to remove a trustee and to appoint additional and new trustees.

Resolution of meeting: how to be proved.

14. WHENEVER a resolution shall be passed at a meeting of creditors for the removal of a trustee or the appointment of a new or additional trustee, a copy of such resolution, purporting to be signed by the chairman of the meeting, shall be sufficient evidence that the meeting was duly convened and the resolution duly passed by the required majority of creditors, and no purchaser or other person deriving title to any property under any sale or disposition made for a trustee appointed under any such resolution shall be bound or concerned to see or inquire into the regularity or validity of such appointment.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

The First Part (*freeholds and leaseholds*).

The Second Part (*onerous leaseholds and stocks and shares in companies*).

The Third Part (*other personal estate included in assignment*).

The Fourth Part (*property excluded*).

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Names of creditors and amounts of debts.*)

No. III.

COVENANT *by* DEBTOR *and two* SURETIES *to pay a* COMPOSITION *of* TEN SHILLINGS *in the* POUND *to a* TRUSTEE *for the* CREDITORS, *and* RELEASE *of* DEBTOR (*a*).

BY DEBTOR AND SURETIES TO PAY COMPOSITION TO TRUSTEES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*debtor*), of the first part, C. D. of, &c., and E. F. of, &c. (*sureties*), of the second part, G. H. of, &c. (*trustee*), of the third part, and the several persons and firms creditors of the said A. B., who or whose attornies or agents on their behalf execute or otherwise accede to these presents, of the fourth part: Parties.

WHEREAS the said A. B. is indebted to the parties hereto of the fourth part in the sums set opposite to their names in the schedule hereto: AND WHEREAS it has been agreed between the said A. B. and his creditors that the creditors shall accept a composition of ten shillings in the pound on their respective debts, to be paid by instalments, and to be secured by the joint and several covenants of the said A. B., and of the said C. D. and E. F. as his sureties, and that the said G. H. shall be the trustee for receiving and distributing the said composition: Recital that debtor is indebted and of agreement for composition.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN consideration of the release hereinafter contained, the said A. B., C. D., and E. F. hereby jointly and severally covenant with the said G. H. (hereinafter called "the trustee"), to pay to him, by three equal instalments, on the —— day of ——, the —— day of ——, and the —— day of ——, a sum of money sufficient to provide a composition of ten shillings in the pound on all the debts owing from the said A. B. to his creditors (subject, as regards secured debts, to the provision relating thereto hereinafter contained), to be applied by the trustee in the payment of such composition accordingly: AND ALSO to pay to the trustee on demand a further sum of money sufficient to meet all costs and expenses incurred by the trustee in or about or in Covenant by debtor and sureties to pay composition.

(*a*) If the composition is made payable through a trustee a rateable division among the creditors without any preference or priority is secured,

BY DEBTOR AND SURETIES TO PAY COMPOSITION TO TRUSTEES.

connection with this arrangement to be applied by the trustee in payment of such costs and expenses accordingly.

Release of debtor by his creditors.

2. In consideration of the foregoing covenant the parties hereto of the fourth part hereby release the said A. B. from all debts, claims, and demands whatsoever, subject to the provisions hereinafter contained.

Provisions of this deed not to prejudice any mortgage or other security of creditors.

3. Nothing herein contained shall prejudice any right or remedy which any creditor may have against any person other than the said A. B., nor prejudice or affect any mortgage, lien, or security which any creditor may have on any property or effects of the said A. B., or of any other person, but a creditor holding any mortgage, lien, or security on any property of the said A. B., shall be entitled to receive the composition hereby provided in respect only of the amount of the debt owing to him after realizing or giving credit for the value of such mortgage, lien, or security, in like manner as he would have had to realize or give credit for the same in order to obtain a dividend in case of bankruptcy.

In witness, &c.

The Schedule above referred to.

(*Names of creditors and amounts of their debts.*)

No. IV.

TO PAY COMPOSITION TO CREDITORS.

COVENANT *by a* Debtor *and his* Surety *to pay a* Composition *to* Creditors *without the intervention of a* Trustee.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*debtor*), of the first part, C. D. of, &c. (*surety*), of the second part, and the several persons and firms, being creditors of the said A. B., who or whose attornies or agents execute these presents, of the third part: Whereas the said A. B. is indebted to the parties hereto of the third part in the sums set

Recital that debtor is indebted

opposite to their names in the schedule hereto: AND WHEREAS it has been agreed that the said parties hereto of the third part shall accept a composition of 10*s.* in the £, payable by two equal instalments, and to be secured by the joint and several covenants of the said A. B., and the said C. D. as his surety, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the release hereinafter contained the said A. B. and C. D. hereby jointly and severally covenant with the several creditors of the said A. B., parties hereto of the third part respectively, to pay to them respectively a sum equal to 5*s.* in the £ on their respective debts, on the —— day of —— next, and a further sum of money equal to 5*s.* in the £ on their respective debts on the —— day of —— next [*or* to deliver to them respectively the joint and several promissory notes of them, the said A. B. and C. D., for the payment to each such creditor of a sum of money equal to 5*s.* in the £ on the debt owing to that creditor, on the —— day of —— next, and of a further sum of money equal to 5*s.* in the £ on the same debt on the —— day of —— next].

TO PAY COMPOSITION TO CREDITORS.

and agreement for composition.

Witnessing part.

Debtor and surety covenant to pay to creditors composition,

or to deliver joint and several promissory notes for composition.

2 and 3. (*As in last Precedent.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. V.

RELEASE *by* CREDITORS *on receiving* PROMISSORY NOTES *for a* COMPOSITION *on their* DEBTS *from the* DEBTOR *and a* SURETY.

RELEASE BY CREDITORS.

THIS INDENTURE, made the —— day of ——, BETWEEN the several persons and firms whose hands and seals are hereunto subscribed and affixed, being creditors of A. B. of, &c., of the first part, and the said A. B., of the second part:

Parties.

RELEASE BY CREDITORS.

Recital of agreement for composition.

WHEREAS at a meeting lately held of the creditors of the said A. B. it was agreed that the creditors should accept a composition of ten shillings in the pound on their respective debts, payable by two equal instalments on the —— day of —— and the —— day of ——, to be secured by the joint and several promissory notes of the said A. B., and of C. D. of, &c., as his surety: AND it was also agreed that as regards any debt secured by any mortgage or charge upon any property of the said A. B., the security should be valued and the creditor should be entitled to the composition in respect only of the balance of the debt over and above the value of the security: AND WHEREAS the names of the several creditors parties hereto of the first part, the amounts of their respective debts, and, in the case of secured debts, the amount at which the securities for the same have been valued, are respectively set forth in the schedule hereto: AND WHEREAS in pursuance of the aforesaid agreement the said A. B. and C. D. have delivered to the creditors, parties hereto of the first part respectively, joint and several promissory notes for the payment to them on the —— day of —— next of sums of money equal to five shillings in the pound, and on the —— day of —— next of sums of money equal to five shillings more in the pound on their respective debts, or, in the case of secured debts, on the balance of those debts respectively after deducting the value of the securities for the same, as they the said creditors hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that in consideration of the delivery to them of the said promissory notes, the said several creditors, parties hereto of the first part, do hereby respectively release the said A. B. from all debts, claims, and demands whatsoever: PROVIDED ALWAYS, that this release shall not prejudice any right or remedy which any creditor may have against any person other than the said A. B. for any debt hereby expressed to be released; and any creditor having a mortgage or charge on any property of the said A. B. shall be entitled to enforce the same for the amount stated to be the value thereof in the third column of the schedule hereto and no more.

That promissory notes of debtor and surety have been given to all the creditors.

Witnessing part.

Release by creditors.

Release not to affect rights against sureties, &c.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

RELEASE BY CREDITORS.

Name of Creditor.	Amount of Debt.	Value of Security, if any.

No. VI.

DEED *of* COVENANT *by a* DEBTOR *and his* SURETY *to secure a* COMPOSITION *of* TEN SHILLINGS *in the* POUND *by* INSTALMENTS, *pursuant to section* 18 *of the* BANKRUPTCY ACT, 1883 (*a*).

COMPOSITION UNDER BANKRUPTCY ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*debtor*), of the first part, C. D. of, &c. (*surety*), of the second part, and E. F., of, &c. (*trustee*), of the third part: WHEREAS a bankruptcy petition against the said A. B. was lately presented to the High Court of Justice [*or* the County Court of ——], and by an order of the said Court, made upon such petition on the —— day of ——, 18—, the official receiver of the Court was constituted receiver of the estate of the said A. B.: AND WHEREAS a composition in satisfaction of the debts owing from the said A. B. in the terms set forth in the schedule hereto, has been duly accepted and approved by the creditors, and has been sanctioned by the said Court: AND WHEREAS it is one of the terms of the composition that the payment thereof shall be guaranteed by the said C. D. as surety,

Parties.

Recite bankruptcy petition and order appointing receiver.

That a composition has been accepted and approved by Court, to be guaranteed by a surety.

(*a*) In the above Precedent it is supposed that the creditors are willing to accept the personal security of the debtor and a surety without a *cessio bonorum*. If there had been no surety, the resolution of the creditors embodying the terms of the composition, and the order of the Court approving it, would have been sufficient, but a separate instrument is necessary to bind the surety. See *Ex parte* Mirabita, L. R. 20 Eq. 772.

COMPOSITION UNDER BANKRUPTCY ACT.

and that the said E. F. shall be the trustee to receive and distribute the same: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B. and C. D. hereby jointly and severally covenant with the said E. F., as such trustee as aforesaid, that they the said A. B. and C. D., or one of them, will duly pay all moneys from time to time payable by the debtor according to the terms of the composition set forth in the schedule hereto as and when the same respectively shall become payable.

Witnessing part.

Joint and several covenants by debtor and surety with trustee to pay composition.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Terms of Composition.

Terms of composition.

1. THE debtor is to pay in full and in priority to all others those debts which under the Bankruptcy Act, 1883, are directed to be so paid in the distribution of the property of a bankrupt (*b*).

Preferential debts to be paid first.

A composition of 10*s.* in the £ to be paid on other debts by instalments.

2. THE debtor is to pay a composition of ten shillings in the pound on all his debts (other than such preferential debts as aforesaid) in satisfaction of such debts, by three equal instalments at the times following (*state the days on which the instalments are to be paid*).

Costs to be paid by debtor.

3. THE debtor is to pay all the costs, charges, and expenses incurred in and about the proceedings in bankruptcy, including the costs of and incident to this composition.

What shall be deemed debts.

4. ALL debts provable in bankruptcy shall be deemed debts for the purpose of this composition, and the composition shall be payable in respect of such amount as would have been so provable.

Provision as to secured creditors.

5. NOTHING herein contained shall prejudice any right or remedy which any creditor may have against any other person than the said A. B., nor prejudice or affect any mortgage, lien, or security which any creditor may have on any property or effects of the said A. B., or of any other person; but a creditor holding any such mortgage, lien, or security, shall be entitled to

(*b*) See sect. 40.

receive the said composition in respect only of the amount of the debts owing to him after realising or giving credit for the value of such mortgage, lien, or security, in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy. COMPOSITION UNDER BANKRUPTCY ACT.

6. THE composition is to be guaranteed by C. D. as surety. Surety.

7. E. F. is to be the trustee to receive and distribute the composition, and he or any future trustee may be removed, and on the death or removal of a trustee the vacancy may be filled up in the manner provided in sections 86 and 87 of the said Act. Trustee.

APPENDIX.

RULES

UNDER THE ACT FOR THE ABOLITION OF FINES AND RECOVERIES, AND SECTION 7 OF THE CONVEYANCING ACT, 1882.

1. No person authorised or appointed under the Act 3 & 4 Will. 4, c. 74 (in these rules referred to as the Fines and Recoveries Act) to take the acknowledgments of deeds by married women shall take any such acknowledgment if he is interested or concerned either as a party or as solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the acknowledgment.

2. Before a Commissioner shall receive an acknowledgment, he shall inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answered in the affirmative and the Commissioner shall have no reason to doubt the truth of her answer, he shall proceed to receive the acknowledgment; but if it shall appear to him that it is intended that provision is to be made for the married woman, then the Commissioner shall not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision shall not have been actually made before, then the Commissioner shall require the terms of the intended provision to be shortly reduced into writing, and shall verify the same by his signature in the margin, at the foot, or at the back thereof.

3. The memorandum to be indorsed on or written at the foot or in the margin of a deed acknowledged by a married woman

shall be in the following form in lieu of the form set forth in section 84 of the Fines and Recoveries Act:

"This deed was this day produced before me and acknowledged by —— therein named to be her act and deed [*or* their several acts and deeds] previous to which acknowledgment [*or* acknowledgments] the said —— was [*or* were] examined by me separately and apart from her husband [*or* their respective husbands] touching her [*or* their] knowledge of the contents of the said deed and her [*or* their] consent thereto and [each of them] declared the same to be freely and voluntarily executed by her."

4. When an acknowledgment is taken by any person other than a judge, the following declaration shall be added to the memorandum of acknowledgment:—

"And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment."

5. A memorandum of acknowledgment purporting to be signed according to any of the following forms shall be deemed to be a memorandum purporting to be signed by a person authorised to take the acknowledgment:—

(Signed) *A.B.*

A Judge of the High Court of Justice in England,
or a Judge of the County Court of ,
or a perpetual Commissioner for taking acknowledgments of deeds by married women,
or the special Commissioner appointed to take the aforesaid acknowledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person authorised to take the acknowledgment, though not signed in accordance with any of the above forms.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

7. Every Commission appointing a special Commissioner to take an acknowledgment by a married woman shall be returned to the office of the registrar of certificates of acknowledgments

of deeds by married women, and shall be there filed. An index shall be prepared and kept in the said office, giving the names and addresses of the married women named in such commissions filed in the said office after the 31st December, 1882. The same rules shall apply to searches in the index so to be prepared as to searches in the other indexes and registers kept in the Central Office.

8. The costs to be allowed to solicitors in respect of the matters hereinafter mentioned, when not otherwise regulated by the general orders in force for the time being under the Solicitors Remuneration Act, 1881, or by special agreement, shall be as follows; anything in the Rules of the Supreme Court as to costs, dated the 12th August, 1875, to the contrary notwithstanding:—

Charges under the Act 3 & 4 *Will. IV. c.* 74 (*the Fines and Recoveries Act*).

	£	*s.*	*d.*
For the indorsements on deeds required by the Fines and Recoveries Act, to be entered on the Court Rolls of Manors of the memorandum of production and memorandum of entry on Court Rolls, to be signed by the Lord Steward or Deputy Steward, each indorsement of memorandum 5*s.*, together	0	10	0
For the entries on the Court Rolls of deeds and the indorsements thereon, at per folio of 72 words . .	0	0	6
For taking the consent of each protector of settlement of lands	0	13	4
For taking the surrender by each tenant in tail of lands	0	13	4
For entries of such surrenders or the memorandums thereof in the Court Rolls, at per folio of 72 words .	0	0	6

9. The following Rules and Orders are hereby repealed, except as to certificates not lodged before the 1st January, 1883, of acknowledgments by married women of deeds executed before the 1st January, 1883, and the affidavits relating thereto:—

The General Rules of the Court of Common Pleas, Hil. Term, 1834.

The General Rules of the Court of Common Pleas, Trin. Term, 1834.

The General Order of the Court of Common Pleas, dated the 24th November, 1862.

The General Order of the Court of Common Pleas, dated the 13th January, 1863.

10. These Rules shall take effect from and after the 31st December, 1882.

RULES

UNDER SECTION 2 OF THE CONVEYANCING ACT, 1882.

1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under section 2 of the Conveyancing Act, 1882, shall be in the Forms III. to VI. in the Appendix, and the certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be indorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The indorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.

5. Every person shall, upon payment of the prescribed fee, be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

6. An alphabetical index of the names of the grantors of all powers of attorney filed under section 48 of the Conveyancing and Law of Property Act, 1881, shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies and extracts which may be required shall be made by the office.

APPENDIX TO THE RULES.

FORM I.

DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Supreme Court of Judicature,
Central Office.

To the Clerk of Enrolments,
or The Registrar of
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

I declare that the search (*or* searches) in the name (*or* names) of required to be made by the requisition for search, dated the is (*or* are) required for the purposes of a sale (*or* mortgage, *or* lease, *or as the case may be*), by *A. B.* to *C. D.*

Signature,
Address and
Description.

Dated .

FORM II.

DECLARATION AS TO PURPOSES OF SEARCH CONTAINED IN THE REQUISITION.

I declare that the above-mentioned search is required for the purposes of a sale (*or* mortgage, *or* lease, *or as the case may be*), by *A. B.* to *C. D.*

FORM III.

REQUISITION FOR SEARCH IN THE ENROLMENT OFFICE, UNDER THE CONVEYANCING ACT, 1882, S. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Clerk of Enrolments,
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

Pursuant to sect. 2 of the Conveyancing Act, 1882, search for deeds and other documents enrolled during the period from 18 to 18 both inclusive, in the following name (*or* names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature address, and description of person requiring the search

Dated .

FORM IV.

REQUISITION FOR SEARCH IN THE BILLS OF SALE DEPARTMENT, UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

Pursuant to sect. 2 of the Conveyancing Act, 1882, search for instruments registered or re-registered as bills of sale during the period from 18 to 18 both inclusive in the following name (*or* names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated .

FORM V.

REQUISITION FOR SEARCH IN THE REGISTRY OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married Women,
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882 search for certificates of Acknowledgments of Deeds by Married Women during the period from 18 to 18 both inclusive, according to the particulars mentioned in the schedule hereto.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a particular Certificate.	Date of Deed, if the Search relates to a particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated .

FORM VI.

REQUISITION FOR SEARCH IN THE REGISTRY OF JUDGMENTS UNDER THE CONVEYANCING ACT, 1882, S. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Judgments,
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for judgments, revivals, decrees, orders, rules, and lis pendens, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from 18 to 18 (*a*), both inclusive, and for executions for the period from the 29th July, 1864 (*b*) (*or as the case may require*), to the 18 , both inclusive, and for annuities for the period from the 26th April, 1855 (*b*) (*or as the case may require*) to the 18 , both inclusive, in the following name (*or* names) (*a*).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated .

(*a*) This will be for five years up to the day of search.
(*b*) If the person against whom the search is made acquired the property after this date, the date of his acquisition will be substituted for it.

FORM VII.

CERTIFICATE OF SEARCH BY ENROLMENT DEPARTMENT UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office,
Enrolment Department.

Certificate of Search pursuant to sect. 2 of the Conveyancing Act, 1882.

In the matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name (*or* names) of for the period from to , both inclusive, and that no deed or other document has been enrolled in the said office in that name (*or* in any one or more of those names) during the period aforesaid.

or, and that, except the described in the schedule hereto, no deed or document has been enrolled in that name (*or* in any one or more of those names) during the period aforesaid.

THE SCHEDULE.

Dated .

FORM VIII.

CERTIFICATE OF SEARCH BY THE REGISTRAR OF BILLS OF SALE UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office,
Bills of Sale Department.

Certificate of Search pursuant to sect. 2 of the Conveyancing Act, 1882.

In the matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Register of Bills of Sale in the name (*or* names) of for the period from 18 to 18 , both inclusive, and that no instrument has been registered or re-registered as a bill of sale in that name (*or* in any one or more of those names) during that period.

or, and that, except the described in the schedule hereto, no instrument has been registered or re-registered as a bill of sale in that name (*or* in any one or more of those names) during the period aforesaid.

THE SCHEDULE.

Dated .

FORM IX.

CERTIFICATE OF SEARCH BY REGISTRAR OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Registry of Certificates of Acknowledgments of Deeds by Married Women.

Certificate of Search pursuant to sect. 2 of the Conveyancing Act, 1882.

In the matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Certificates of Acknowledgments of Deeds by Married Women in the name (*or* names) of for the period from to 18 , both inclusive, for a certificate dated the *or* for certificates of acknowledgment of a deed dated the .

or for certificates of acknowledgments of deeds relating to (*fill in the description of the property from the Requisition*)
and that no such certificate has been filed in that name (*or* in any one or more of those names) during the period aforesaid.

or, and that, except the certificate (*or* certificates) described in the Schedule hereto, no such certificate has been filed in that name (*or* in any one or more of those names) during the period aforesaid.

Surname.	Christian Names of Wife and Husband.	Date of Certificate.	Date of Deed.	County, Parish, or Place in which Property situated, or other description of the Property.

Dated day of 188 .

FORM X.

CERTIFICATE OF SEARCH BY REGISTRAR OF JUDGMENTS UNDER CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

The Registry of Judgments.

Certificate of Search pursuant to sect. 2 of the Conveyancing Act, 1882.

In the matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Judgments for judgments, revivals, decrees, orders, rules, lis pendens, judgments at the suit of the Crown, Statutes, recognizances, Crown bonds, inquisitions, and acceptances of office, for the period from 18 to 18 , both inclusive, and for executions for the period from 18 to 18 , both inclusive, and for annuities for the period from to 18 , both inclusive, in the name (*or* names) of and that no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name (*or* in any one or more of those names) during the respective periods covered by the aforesaid searches.

or, and that, except the mentioned in the Schedule hereto, no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, Statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name (*or* in any one or more of those names) during the respective periods covered by the aforesaid search.

THE SCHEDULE.

Dated the day of 188 .

FORM XI.

REQUISITION FOR CONTINUATION OF SEARCH UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office.

Requisition for Continuation of Search.

To the Clerk of Enrolments,
or The Registrar of
Royal Courts of Justice,
London, W.C.

In the matter of *A. B.* and *C. D.*

Pursuant to sect. 2 of the Conveyancing Act, 1882, continue the search for [ ], made pursuant to the requisition dated the day of , 18 , in the name (*or* names) of , from the day of to the day of , 18 , both inclusive.

Signature, address, and description of person requiring the search.

Dated .

FORM XII.

CERTIFICATE OF RESULT OF CONTINUED SEARCH UNDER THE CONVEYANCING ACT, 1882, S. 2, TO BE INDORSED ON ORIGINAL CERTIFICATE.

This is to certify that the search (*or* searches) mentioned in the within written certificate has (*or* have) been diligently continued to the day of , 18 , and that up to and including that date [except the mentioned in the schedule hereto (*these words to be omitted where nothing is found*)], no deed or other document has been enrolled, *or* no instrument has been registered or re-registered as a bill of sale, *or* no certificate has been filed, *or* no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity, has been registered or re-registered in the within-mentioned name (*or* in any one or more of the within-mentioned names).

Dated .

RULES under the LAND CHARGES REGISTRATION AND SEARCHES ACT, 1888.

RULE 1.—The several registers established by the Act shall contain the following particulars respectively, or such other particulars as the registrar shall from time to time determine :—

(1.) The register of writs and orders shall contain :—

(a.) The name, address, and description of the person whose land is affected.

(b.) The date and nature of the writ or order, and the Court, and the action or matter, by and in which the writ or order was issued or made.

(c.) The date of registration, and of any renewal of registration.

(d.) The name and address of the applicant or of the solicitor (if any) making the application.

(2.) The register of deeds of arrangement shall contain :—

(a.) The name, address, and description of the person whose land is affected.

(b.) The date of the deed and the names of the parties, provided that where the creditors are numerous it shall not be necessary to specify more than three.

(c.) The date of registration.

(d.) The name and address of the applicant or of the solicitor (if any) making the application.

(3.) The register of the land charges shall contain :—

(a.) The name, address, and description, and capacity (that is to say, whether he is : (i) beneficially entitled to the first estate of freehold ; (ii) tenant on the court rolls ; (iii) beneficially entitled to a lease for lives or a life at a rent or for years) of the person in whose name the registration is made.

(b.) The date of the charge, the statute under which it is made, and the parish in which the land charged is situated.

(c.) The date of registration.

(d.) The name and address of the applicant or of the solicitor (if any) making the application.

Rule 2.—Every application for registration shall, unless made by a solicitor, be supported by the statutory declaration of the applicant as to the truth of the particulars set forth in it.

Rule 3.—The alphabetical index shall consist of the registers themselves, all entries in such registers being made alphabetically in the manner now used in the register of judgments in the Central Office of the High Court of Justice, or in such other manner as the registrar shall from time to time determine.

Rule 4.—Applications for registration, searches (official and otherwise), and official certificates shall be made on, and shall furnish the particulars set forth in the several forms for those purposes given in the schedule hereto, or in such other forms as the registrar shall from time to time determine.

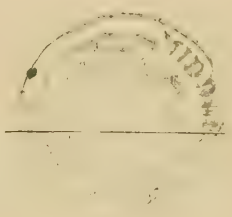
Rule 5.—Forms shall be sold at the office of land registry.

Rule 6.—Certificates of official searches shall be marked with the stamp of the Search Department of the Land Registry, and shall be issued as soon as possible after receipt of the applications.

Rule 7.—In any case of modification or cancellation of entries on the register, such evidence in respect thereof as the registrar shall from time to time think necessary shall be required.

Rule 8.—These rules may be cited as "The Land Charges Rules, 1889."

January 1, 1889.



THE SCHEDULE.

FORMS.

FORM I.

APPLICATION TO REGISTER A WRIT OR ORDER.

Register of Writs and Orders.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the ——— day of ———, 18—. By	A Writ [*or* Order] of the ——— Division of the High Court. Dated the ——— day of ———, 18—.
of ——— (*Signed*) ——— Applicant [*or* Solicitor].	TITLE OF THE ACTION OR MATTER. ——— *Plaintiff.* ——— *Defendant.*

Name of the Person whose Estate is affected.

Surname.	Christian Name or Names.	Address.	Title, Trade, or Profession.

FORM II.

Application to Register a Deed of Arrangement.

Register of Deeds of Arrangement.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the ——— day of ———, 18—.	*Date of the Deed*_____
By	Parties to the Deed.*
_____	_____
of_____	_____
(*Signed*)_____	_____
Applicant [*or* Solicitor].	_____

* Names only; and where the creditors are numerous, enter the names of the first three, adding "and others."

Name of the Person whose Estate is affected.

Surname.	Christian Name or Names.	Address.	Title, Trade, or Profession.

FORM III.

Application to Register a Land Charge.

Register of Land Charges.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the ——— day of ———, 18—. By ——— of ——— (*Signed*) ——— Applicant [*or* Solicitor].	A charge upon lands in the parish(es) of ———. Dated the ——— day of ———, 18—. By virtue of the statute ———. ———

The Person in whose Name the Registration is to be made.

Surname.	Christian Name.	Address.	Title, Trade, or Profession.	Capacity.*

* Here state whether beneficially entitled to the first estate of freehold, or to a lease for lives or life, or for a term of years, or whether tenant on the Court Rolls of the Manor.

FORM IV.

Declaration in Support of an Application to Register.

I, , of , solemnly and sincerely declare that the writ [order, deed, charge], whereof the particulars are set forth in the application for registration thereof, marked "A," and now produced and shown to me, was actually issued [made, executed] at the time and in the manner in the said application mentioned, and that the particulars set forth therein are to the best of my knowledge, information, and belief, true.

And I make, &c.

FORM V.

Application for an Official Search.

Application for Official Search.

N.B.—This form may be filled in for a future day not less than three days subsequent to its arrival in the office.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Please search the Register of Writs and Orders for the period of five years ending the of , 18 inclusive. [Deeds of Arrangement from the of , 18 , to the of , 18 inclusive. Land Charges from the of , 18 , to the of , 18 inclusive.]

Surname or Names.	Christian Name or Names.	Address or Addresses.*	Titles, Trades, or Profession.*

* If the person against whom the search is to be made has more than one address, title, trade, or profession, this may be filled up accordingly.

I declare that the above search(es) is (are) required for the purposes of a sale [mortgage, lease, *or as the case may be*] from to .

Signature, Address, and Description of the Applicant or Solicitor.

Dated this of , 18 .

N.B.—State here whether Certificate to be sent by post or to be kept till called for.

FORM VI.

DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

I declare that the search(es) in the name(s) of required by the application of , dated the of , 18 , is (are) required for the purposes of a sale [mortgage, lease, *or as the case may be*] from to .

Signature and address of applicant or solicitor :

of

Dated this of , 18 .

FORM VII.

CERTIFICATE OF OFFICIAL SEARCH.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

This is to certify that there are no entries in the Register of Writs and Orders for the period of five years ending inclusive [Deeds of Arrangement from to inclusive, Land Charges from to inclusive], in the names of , except the following :—

Dated this of , 18 .

Land Registry.
Search Department.

FORM VIII.

REQUISITION FOR CONTINUATION OF OFFICIAL SEARCH.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Please continue the search(es) in the Register(s) of , made pursuant to the requisition dated the of , 18 , in the name(s) of down to the of , 18 , inclusive.

Signature and address of applicant or solicitor :

Dated this of , 18 .

N.B.—The certificate of the original search must be forwarded with this application.

FORM IX.

CERTIFICATE OF CONTINUATION OF OFFICIAL SEARCH (TO BE INDORSED ON THE ORIGINAL CERTIFICATE).

This is to certify that there are no further entries in the register of against the within name(s) down to the of , 18 , inclusive, except the following, namely,

In the register of

Dated this of , 18 .

Land Registry,
Search Department.

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